ALIGNING RELIGIOUS LAW AND STATE LAW

Street-Level Bureaucrats and Muslim Marriage Practices in Pasuruan, Indonesia

Muhammad Latif Fauzi

Universiteit Leiden
The Netherlands

Universiteit
Leiden
The Netherlands

Aligning religious law and state law: street-level bureaucrats and Muslim marriage practices in Pasuruan, Indonesia
Fauzi, M.L.

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Muhammad Latif Fauzi

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Aligning Religious Law and State Law

Street-Level Bureaucrats and Muslim Marriage Practices in Pasuruan, Indonesia

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Promotores:

Prof. dr. L.P.H.M. Buskens

Prof. dr. A.W. Bedner

Promotiecommissie:

Prof. dr. N.J.G. Kaptein

Dr. Nadia Sonneveld

Prof. Dr. Euis Nurlaelawati (UIN Sunan Kalijaga, Yogyakarta, Indonesia)

Dr. Stijn van Huis (Universitas Bina Nusantara, Jakarta, Indonesia)

To my parents, my wife Latifah and my daughters Neva and Queena
for their endless love, support and encourgement

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A Note On The Transliteration System

This thesis uses the system of Arabic transliteration adopted by many institutions and journals in the Anglo-Saxon world, such as the Library of Congress in Washington, D.C., USA, and the *International Journal of Middle Eastern Studies*. This system has been departed from in cases where specific transcriptions have come into general use. The words such as Islam and Qur'an, for instance, are written as they are, instead of *Islām* and *Qur'ān*. Names of personalities, organisations and foundations, as well as titles of books, journals and articles are rendered according to locally applied spellings and transliterations. For Arabic terms and names which are not part of the Indonesian language, I use the international standard of Arabic transliteration. With the exception of the term *'ulamā'* (singular *'ālim*), the plural forms of Arabic-influenced terms are indicated by adding an s to the word in the singular, as in *kitāb*s or *ḥadīth*s rather than *kutub* or *aḥādith*.

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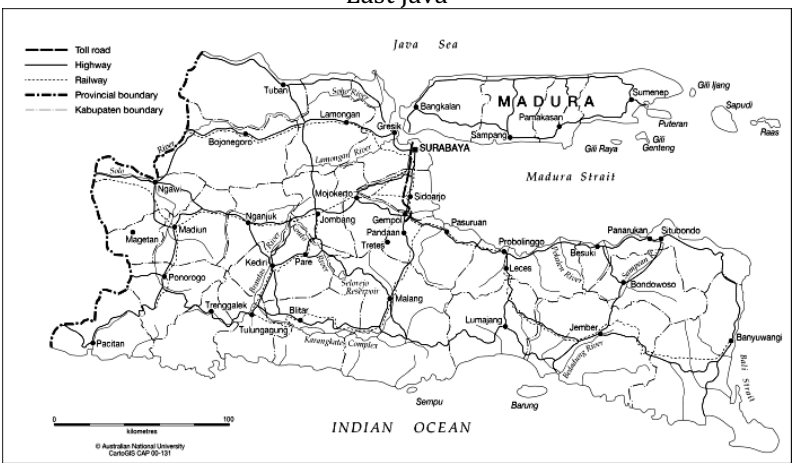
Maps*

Indonesia

East Java



* All maps are from CartoGIS ANU

Introduction

1. Background

In 2012, Fikri, at the time the head of a district (*Bupati*) in West Java province, entered into a marriage with a seventeen-year-old teenager, Octora. The marriage was a traditional one and not registered. The reason it was unregistered because it was a polygynous marriage and Fikri did not have a permission from the local Islamic court to take a second wife. The marriage lasted only four days and ended in a unilateral repudiation (*talak*) which attracted extensive coverage in the public print and online media.[1] In a live-television-interview session, Fikri explained the reason he divorced Octora, "It is like when you buy new clothes. If something is damaged, you can return it." Fikri believed Octora was no longer a virgin when she married him. Fikri drew an analogy between his bride and an item of clothing. Most people found his analogy irritating and distasteful. The marriage elicited a wave of public rumours and was the topic of legal debates. Following the public protests and a people's march, the local parliament set up a special committee (*panitia khusus*) to investigate Fikri's conduct. The majority of the political factions in the parliament

[1] Although his marriage lasted for a limited time, it was not a *mut'ah* marriage. *Mut'ah* is an Arabic term, *mut'a*, that literally means pleasure or enjoyment. A *mut'ah* marriage is a marriage where a man agrees to give a woman something for a specified period in return for her sexual favour. The institution of temporary marriage was prohibited by the second caliph, 'Umar ibn Khattāb, who viewed it as fornication. This view is perceived to be fallacious by Shi'i Muslims, who have continued to practice temporary marriage. Shahla Haeri, *Law of Desire: Temporary Marriage in Shi'i Iran* (Syracuse, N.Y.: Syracuse University Press, 2014), p. 50.

came to the conclusion that the *Bupati* was guilty of wilful misconduct. On account of this contravention and his violation of the Marriage Law, the *Bupati* was considered to have broken his oath of the office (*sumpah jabatan*). Later, the Indonesian Supreme Court endorsed the parliament's decision. Fikri finally stepped down.

In this case, Fikri deliberately avoided registering his marriage. This would seem to suggest that Fikri regarded the importance of the validity of a marriage only from a restricted religious point of view. In Fikri's eyes, as in those of most Indonesians, marriage is more than a legal contract between two parties. It is an important communal and spiritual affair. Family law, including marriage law, has been the most important field in which the principles laid down by the religious norms which make family law the last stronghold of the Sharia hold sway.[2] Fikri brushed aside the significance of legalizing his marriage as the state law required him to do, among other reasons because his polygynous marriage simply did not qualify to be registered under Indonesian law. He was not in a position to present a permission to enter into a polygynous marriage granted by an Islamic court.

Furthermore, in Indonesia, and in other major parts of the world, marriage remains an essential part of the social and moral fabric.[3] Throughout the Muslim world, over the centuries the practice of Muslim marriage has been imbued with a multitude of local norms and influenced by the diversity of local actors.[4] Compliance to local norms and the involvement of local actors in a marriage ceremony are essential elements in winning social acceptance of a marriage. In Muslim communities, social acceptance is also unquestionably determined by the upholding of religious principles in the marriage ceremony. Generally speaking, the relationship between religious norms and social acceptance in Indonesia seems indivisible. However,

[2] Lynn Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy* (Amsterdam: Amsterdam University Press, 2007), p. 11.
[3] Maria Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire* (Oxon and New York: Routledge, 2017).
[4] Dawoud Sudqi el- Alami, *The Marriage Contract in Islamic Law in the Shari'ah and Personal Status Laws of Egypt and Morocco* (London: Graham & Trotman, 1992).

for certain people, obtaining social acceptance is more important than having state recognition. One possible reason is because the state legal norm applies strict regulations on certain marriage practices, such as polygyny, yet religious norm does not. Sonneveld argues that, from a social point of view, there is no obvious difference whether a marriage is legal or not, as long as it has been socially accepted.[5]

It has been argued that regulation of family relationships is much more the domain of social norms rather than of formal legal enforcement.[6] However, in the framework of the modern nation-state, social acceptance is far from enough. The nation-state has assumed the right to signify legal validity by introducing the obligation to register a marriage. One reason is that the state law in many countries applies more egalitarian gender norms than is common in Indonesian society; signalling the withdrawal of its support from hierarchical, differentiated marital roles. Another reason is the right to resort to legal enforcement when family relationships have broken down. In divorce, informal mechanisms are not always effective in enforcing obligations and protecting rights.[7]

In the Indonesian context, people embrace three forms of validity of marriage. The first is religious validity. Fikri's marriage ceremony was carried out according to the requirements of Islam but was unregistered. In Indonesian life, marriage without registration is popularly known as *nikah sirri*. Literally *nikah sirri* means a secret marriage which does not entail either publicity (*i'lān*) or a festive meal (*walīma*). This notion arises from the legal discourse among classical Muslim jurists on the impermissibility of *nikāh al-sirr*, a marriage contract which is deliberately kept secret and concluded in the absence of male witnesses.[8] Diverging somewhat from this norm,

[5] Nadia Sonneveld, 'Rethinking the Difference Between Formal and Informal Marriages in Egypt', in *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. by Maaike Voorhoeve (London: I.B. Tauris, 2012), pp. 77–107.
[6] Elizabeth S. Scott, 'Social Norms and the Legal Regulation of Marriage', *Virginia Law Review*, vol. 86, no. 8 (2000), p. 1903.
[7] *Ibid.*, p. 1901.
[8] According the classical Malikite scholars, marriage without male witnesses is permissible as long it is announced publicly (*i'lān*). Khoiruddin Nasution, *Status Wanita di Asia Tenggara:*

nikah sirri in Indonesia mostly refers to a religious marriage without registration.[9] Such a marriage is performed in the presence of local religious leaders (*kyai*) and witnesses (sometimes the marriage guardian is present too), in compliance with the Islamic law, but without the supervision of an official marriage registrar (*penghulu*).[10] For many and provably even most Muslims, the validity bestowed by religion is more important than the validity accorded by the state law.

The second requirement is legal validity. The state demands every single marriage be registered. The Kompilasi Hukum Islam (KHI, the Compilation of Islamic law), which is a major reference work for judges in Islamic courts, states that registration is meant to protect the proper institution of marriage (*ketertiban perkawinan*). This act of registration makes a marriage legally valid. If a marriage is legally valid, it must be religiously valid because, according to the Marriage Law, a marriage can be registered only if it has met with the religious requirements. However, instead of integrating registration into the legal conditions of a marriage, it is regarded as a legal complement. Although unregistered marriage has been considered to have no 'legal effect', it is not necessarily void. The legal obligation of registration laid down in Law 22/1946 on Registering Islamic Marriage, Divorce and Reconciliation does not affect the lawfulness of an unregistered marriage as long as it was concluded according to the religious requirements.[11] Bowen referred the complicated co-existence of religious validity and state recognition as "dual validity".[12]

The third requirement is social acceptance of persons living together in a form which is commonly referred to as a marriage. Mir-

Studi terhadap Perundang-Undangan Perkawinan Muslim Kontemporer di Indonesia dan Malaysia (Leiden: Indonesian-Netherlands Cooperation in Islamic Studies (INIS), 2002), p. 139.

[9] Eva F. Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', *Journal of Law and Religion*, vol. 33, no. 2 (2018), pp. 291–309.

[10] Silvia Vignato, '"Men Come In, Men Go Out": Single Muslim Women in Malaysia and Aceh', *Social Identities*, vol. 18, no. 2 (2012), pp. 239–57.

[11] Stijn van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba' (PhD Dissertation. Leiden University, 2015), p. 95.

[12] John R. Bowen, *Shari`a, State, and Social Norms in France and Indonesia* (ISIM Paper No. 3. Leiden: Institute for the Study of Islam in the Modern World, 2001), p. 10.

Hosseini refers to this as "a socially-valid marriage".[13] In practice in society, social acceptance often intertwines with religious validity. In Java generally, if a marriage is valid according to religion, it is assured of social acceptance. Social acceptance is inextricably tied up with avoiding social stigma when it comes to activities related to sexual intercourse. Thus, marriage acts as a social norm when it comes to regulating sexual relations. Especially in the case of teenage pregnancy, marriage is the only acceptable solution.[14] In addition, marriage also defines women's sexuality. Parker *et al*., for instance, have addressed the experience of being a *janda* (widow or divorcée) in Indonesia as a gendered and moral experience. They argue that the status of independent widows (*janda mati*) and divorcées (*janda cerai*) has been connected to immorality because it epitomizes the opposite to the constructions of an ideal marriage.[15]

If we now return to Fikri, we understand that his unregistered marriage has everything to do with how Sharia and the state law are perceived. His case is not uncommon and not exclusive to Indonesia. In many Muslim majority countries, we see similar tendencies. In Egypt, the tension between state law and religious law on marriage results in the practice of *'urfi* (customary) marriage.[16] Likewise, non-registration leads to *fātiḥa* marriage in Morocco.[17] It is clear that the participants in an unregistered marriage attach more importance to the Sharia than to the state law. They value the validity of a marriage

[13] Ziba Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco* (London and New York: I.B. Tauris, 2000), p. 145.

[14] Mies Grijns and Hoko Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns', *Asian Journal of Law and Society* (2018), p. 7.

[15] Lyn Parker, Irma Riyani, and Brooke Nolan, 'The Stigmatisation of Widows and Divorcees (janda) in Indonesia, and the Possibilities for Agency', *Indonesia and the Malay World*, vol. 44, no. 128 (2016), pp. 27–46.

[16] Mona Abaza, 'Perceptions of 'Urfi Marriage in the Egyptian Press', *ISIM Newsletter*, vol. 7 (2001), pp. 20–1.

[17] A marriage contract is signed at a ceremony which intertwines religious symbolism and rituals such as the recitation of the *Fatiha*, the first verse of the Koran, see Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco*, p. 32. It is often used to hide underage marriage, see Paul Scott Prettitore, 'Family Law Reform, Gender Equality, and Underage Marriage: A view from Morocco and Jordan', *Review of Faith and International Affairs*, vol. 13, no. 3 (Taylor & Francis, 2015), p. 39.

purely and simply from the perspective of Sharia. According to Sharia, marriage is crucial as it renders sexual relations between a man and woman licit.[18] Hallaq even argues that, in Islam, marriage is the key to maintaining social harmony and acts as the cornerstone of the entire Islamic order.[19]

In *Marriage on Trial*, Mir-Hosseini describes Sharia as still forming "the basis of family law, though reformed, codified and applied by a modern legal apparatus".[20] Furthermore, she argues that Islamic law, as divine law, has constituted "the backbone of Muslim society… ever since".[21] Meanwhile, those entering into an unregistered marriage regard registration as an invention of the modern state. Unregistered marriage demonstrates that there still is continuity in the tension between Sharia law and state law. According to Cammack, Islamic law emphasizes an exclusive divine sovereignty and claims revelation as its basic foundation, whereas the concept of nation-state tends to monopolize the law-making process through the doctrine of positivism.[22] The first is represented by *ulama*, while the later by a legislative body. Legislation has assumed the task of the classical *fiqh* tradition in the administration of the modern state.

The relationship between Sharia and state sovereignty in post-colonial Muslim societies has always featured as an important subject among legal anthropologists.[23] This is because in many societies people still feel traditional mechanisms (religious law, customary law

[18] Ziba Mir-Hosseini, 'Nikah', *Encyclopedia of Islam and the Muslim World* (New York: Macmillan, 2004), p. 510.

[19] Wael B. Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge: Cambridge University Press, 2009), p. 271.

[20] Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco*, p. 8.

[21] *Ibid.*, p. 4.

[22] Mark Cammack, 'Islam, Nationalism and the State in Suharto's Indonesia', *Wisconsin International Law Journal*, vol. 17 (1999), pp. 27–63.

[23] There is an abundance of scholarly works which centre their discussion on the position of Sharia in the different nation-states. To mention some, Clark B. Lombardi, *State Law as Islamic Law in modern Egypt: The Incorporation of the Sharīʿa into Egyptian Constitutional Law* (Leiden: Brill, 2006); Morgan Clarke, *Islam and Law in Lebanon: Sharia within and without the State* (Cambridge: Cambridge University Press, 2018); Jan Michiel Otto (ed.), *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present* (Leiden: Leiden University Press, 2010).

and social organization) are sufficient to deal with disputes. Despite their stance, they are being challenged by new vigorous pressure exerted by the state authority whose aim is to sustain the concept of state sovereignty and citizenship. The incorporation of Sharia into the state law has caused conflict and tension and led to legal and political dissonance.[24] Regardless of this dissonance, on a practical level, the different legal bodies (Sharia law, state law and customary law) co-exist and relate to each other in an Islamic triangle, encompassing the changing relations between all of them.[25]

Indonesia, which is blessed with a myriad of local cultures, provides a pre-existing foundation on which Islamic law can be understood, practised and taken as a point of orientation by Muslims in multiple ways. Muslim society in Indonesia is crisscrossed by competing norms, social orders and claims about how people should live in an appropriately Islamized way and about what they should become.[26] Bowen sheds new light on the fact that Muslims are being challenged by competing legal systems in which negotiation is an irrevocable instrument in dealing with the incontrovertible involvement of state, judges, jurists and practitioners.[27] From his view, it is clear that negotiation is the key concept. At the same time, people are having to cope with the pressure caused by the significant growth in the demand for the greater participation of women in education and skilled employment,[28] for a redefinition of the rights and duties of

[24] Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawai'i Press, 2008), pp. 25–6.

[25] Léon Buskens, 'An Islamic Triangle: Changing Relationships between Sharia, State Law, and Local Customs', in *ISIM Newsletter*, vol. 5 (Leiden: Institute for the Study of Islam in the Modern World, 2000), p. 8.

[26] Franz Von Benda-Beckmann, *Property in Social Continuity: Continuity and Change in the Maintenance of Property Relationships through Time in Minangkabau, West Sumatra* (The Hague: Martinus Nijhoff, 1979); Franz Von Benda-Beckmann and Keebet Von Benda-Beckmann, 'Islamic law in a plural context: The struggle over inheritance law in colonial West Sumatra', *Journal of the Economic and Social History of the Orient*, vol. 55, no. 4/5 (2012), pp. 771–93.

[27] John R. Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning* (Cambridge: Cambridge University Press, 2003).

[28] Linda Rae Bennett, *Women, Islam and Modernity: Single Women, Sexuality and Reproductive Health in Contemporary Indonesia* (London and New York: RoutledgeCurzon, 2005).

women and men and to promote the equality of women. This new trend has challenged the perceived understanding of Islamic law and traditional scriptural interpretations. In this context, Nancy Smith-Hefner has underscored that the changes taking place among urban, educated Muslim Javanese youth are also influenced by growing ideas about individual autonomy and increasing agency. The growing agency of women has opened up many possibilities and is guiding their actions in their quest to find solutions which will support their ideal of a better life.[29]

On the basis of this background, my thesis addresses these questions: *How does the Indonesian state regulate Muslim marriage*? *How do people practise and negotiate the state regulations on Muslim marriage, in the light of the variety of norms imposed on them*? *How do local officials deal with their practices*? *What role do intermediaries play in this process, in East Java particularly*? In an attempt to answer these key questions, the thesis first elucidates how the Indonesian state governs Muslim marriages. Since the early days of Independence, the government of Indonesia has included marriage, divorce and reconciliation among Muslims in its steady march towards greater bureaucratization. However, as in practice bureaucratization is not static but develops over time, this study hence investigates what legal reforms the state has set in motion, how local officials interpret and implement the state law, how religious leaders respond to these legal reforms, how the practices adopted by Muslims reveal their responses, how state officials deal with their practices and in what ways intermediaries play a role in this process. To understand how local society responds to these legal reforms, this thesis examines marriage practices in a Muslim community in Pasuruan, East Java.

By looking at local practices in Pasuruan, this thesis aims to offer a critical perspective on the relationship between locally based legal norms and the modern legal norms promoted by the state. This is because the state has tried and tested various ways to deal with

[29] Nancy J. Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', *Journal of Southeast Asian Studies*, vol. 36, no. 3 (2005), pp. 441–59.

Muslim marriage in its attempts to realize a modern interpretation of the 'common good'. However, Muslims have, and necessarily maintain, their own interpretation of how the 'common good' should be articulated in marriage. The bulk of their understanding is derived from religious texts or other cultural norms and emerges from a lived engagement with a multitude of ideas, expectations and local norms. In this framework, this thesis employs 'everyday practice', an important analytical category, in its attempt to take "a more nuanced look at Muslims' religious lives"[30] without incurring any unnecessary dichotomies. Employing this approach, I examine people's involvement in and experiences of marriage legality and subject these to interpretations.

This study suggests that, in Indonesia, the relationship between the state and religion is not a matter of competition but of mutual adjustment. It cannot be claimed that there is any clear-cut competition between religious law and state law. Of course, there is a certain segment of religious leaders who do oppose the state law, mainly those who reject the foundation of the nation-state, but the majority accept both the state and the state law. There are two conditions which explain why the former have chosen to resist. The first occurs when they think the state law really goes against fundamental tenets laid down in Sharia or when the state law introduces something explicitly impermissible according to Sharia, such as allowing same sex marriage or totally prohibiting polygyny. However, this would seem to be nearly impossible in Indonesia because, to a large extent, the legal reforms have scrupulously taken into account what is permissible and impermissible according to Sharia. In most cases, and this is the second form of resistance, when the state law is too rigid to deal with particular practices which are socially acceptable, religious law offers a way out. People assume that religious law offers a version of *maṣlaḥa* (common good) which has the virtue of flexibility, especially in tackling problems of sexual morality

[30] Samuli Schielke and Liza Debevec, 'Introduction', in *Ordinary lives and grand schemes: an anthropology of everyday religion*, ed. by Samuli Schielke and Liza Debevec (New York and Oxford: Berghahn Books, 2012), p. 4.

such as *zina* and teenage pregnancy. In this case, marriage is the only acceptable solution. Because marriage is perceived in society as a religious ceremony, religious law is required.

Another point which this study suggests is that the state's attempt to reform both Muslim marriage law and its own marriage bureaucracy has maintained the significance of informality in the legal implementation. This informality is important as it offers the capacity to make a compromise between people's deep interest in religious law and state law. It opens a door for the roles played by informal actors in helping ordinary people simultaneously negotiate their desire to observe their religion with all propriety and to seek state recognition. On the central state level, this informality is frowned upon as it makes inroads into the government's ideas of establishing clean governance.

2. Marriage, Religion and the State

For the majority of religious people, marriage is "more than a mere contract". It exceeds the compass of a private contract between two individuals. It serves as an important familial, communal, even spiritual event. They are completely convinced that the appropriate legal confirmation of a marriage requires more than just compliance with the state procedural forms of registration. It definitely requires a religious ceremony held before a qualified official who solemnizes the union and before a community who witness the new couple commencing a new chapter in their lives together.[31] Because these communal and religious dimensions of marriage are more important to so many people than the formally conferred civil status, the relationship between the state procedures and the religious law is an unresolved topic of debate. This persisting tension means that the relationship between the two is a recurring theme in the study of Islamic law and society.[32] The relationship between them is key to

[31] Joel A. Nichols, 'Religion, Family Law, and Competing Norms', in *Negotiating State and Non-State Law: The Challenge of Global and Local Legal Pluralism*, ed. by Michael A. Helfand (Cambridge: Cambridge University Press, 2015), p. 198.

[32] Baudouin Dupret, 'Legal Pluralism, Plurality of Laws, and Legal Practices: Theories, Critiques, and Praxiological Re-specification', *European Journal of Legal Studies*, vol. 1, no. 1 (2007), pp.

understanding the varied dimensions of Muslim practice in Indonesia. It is therefore important to understand the position of Sharia, *fiqh* and the state in Indonesian life.

Sharia, *fiqh* and the state law interrelate with each other at certain points. Sharia has been set down by God to be obeyed by Muslims.[33] Literally Sharia means "way", "path" or "the road to a watering place".[34] It is, therefore, defined as God's law, setting out the way of life a Muslim should follow. However, many Muslim scholars choose to emphasize the legal side of Sharia.[35] Although Sharia can be said to contain law, it embraces also elements and aspects which are not, strictly speaking, law.[36] The next concept is *fiqh*. While Sharia comes from God through the verses of the Qur'an, *fiqh* (which literally means understanding) is the interpretations made by human beings of those Qur'anic legal verses which have imprecise, multiple meanings. Therefore, *fiqh* is relative and subjective and varies according to the reasoning of different individuals. Differing opinions among jurists are inescapable.

The last is state 'Islamic' law. Summing this up in rather simple terms, it is a codification of Sharia or *fiqh* and is limited to a particular aspect of them. Of course, this position assumes the key role of the state in the legislation. Lombardi remarks that, under certain conditions, a government could legitimately impose its preferred understanding of God's law and hence could force its citizens to observe the government's interpretation in preference to their own interpretations.[37] However, it is impossible to ignore that there is still room for a Muslim to choose potential rules of behaviour rooted in an interpretation of God's law. Arabi came up with the idea of

1–26; Arskal Salim, *Contemporary Islamic Law in Indonesia: Shari'ah and Legal Pluralism* (Edinburgh: Edinburgh University Press, 2015).

[33] Qur'an 45: 18.

[34] Joseph Schacht, 'Shari'a', in *First Encyclopedia of Islam*, ed. by M. Th. Houstma et al. (Leiden: Brill, 1987), pp. 320–4.

[35] Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*, p. 11.

[36] Bernard G. Weiss, *The Search for God's Law: Islamic Jurisprudence in the Writing of Saif al-Dīn al-Āmidī* (Salt Lake and Herndon: University of Utah Press and International Institute of Islamic Thought, 2010), p. 1.

[37] Lombardi, *State Law as Islamic Law in modern Egypt: The Incorporation of the Sharīʿa into Egyptian Constitutional Law*, p. 19.

positivization, that is, the process of the integration of Sharia into the modern state political structure, which is allowed from a religious perspective as long as not it does not lead to the abandoning of the ethical and religious spirit of Islam.[38] The boundaries of where the state can impose its interpretation are if it does not command Muslim citizens to disobey God and if the law is expected to advance the welfare of the citizens. [39]

2.1. Sharia in the Nation-State

According to Hallaq, the introduction of the nation-state and the way it should deal with Sharia has been the most ubiquitous problem in the legal history of the modern Muslim world.[40] For centuries, Sharia, an intricate notion which comprises God's commands,[41] has reigned supremacy in Muslim societies.[42] Nevertheless, a considerable debate has arisen over how Sharia law as prescribed in the classical treatises should respond to the changing social life and adjust its management of social order. Different legal interpretations in Sharia make it difficult to present a unified language of law and to produce more decisive rules devised to create legal certainty. The local political powers have had the right to make and apply rules and regulations in an indirect initiative to provide "uniformity of the law" among different legal

[38] Oussama Arabi, *Studies in Modern islamic Law and Jurisprudence* (The Hague: Kluwer Law International, 2001), p. 194.
[39] Lombardi, *State Law as Islamic Law in modern Egypt: The Incorporation of the Sharīʿa into Egyptian Constitutional Law*, p. 19.
[40] Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 359.
[41] Rudolph Peters, 'From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified', *Mediterranean Politics*, vol. 7, no. 3 (2002), pp. 82–95; Aharon Layish, 'The Transformation of the Sharīʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World', *Die Welt des Islams*, vol. 44, no. 1 (2004), pp. 85–113; Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia*, pp. 13–4.
[42] Early in the ninth century, Sharia was the greatest subject of Islamic scholarship. Renowned as *fiqh* (literally *al-fahm* (Arabic) or understanding), it represents the intellectual efforts of Muslim jurists to understand the legal substance written in the holy texts. This intellectual enterprise, comprising a set of norms, commentaries and stipulations and laid down in the works of classical-medieval Muslim jurists, eventually developed into an established system of Islamic legal scholarship. Hallaq, *Shari'a: Theory, Practice, Transformations*..

schools.[43] This legal-cum-political right of the ruler, popularly known as *siyāsa shar'iyya*, has grown into an important instrument by which such a leader can advance his judicial authority. In practice, *siyāsa shar'iyya* granted the ruler the authority to legislate as a complement to Sharia law when the religious texts offered no opinion about a certain matter. New courts could be created as long as considered necessary for the attainment of the public good.[44] This judicial authority also required the incorporation of religious piety and knowledge of Sharia.

As a consequence, the formation of state Islamic law has involved power relations and encompassed the multifaceted social, political and legal narratives in society over the last two centuries.[45] Scholars have indicated that the core of the problem of dominant influence of European modernity in the shaping of Islamic legal institutions has meant a struggle in power relations. Religious authorities could be replaced by the state power in the administration of private affairs. Hallaq argues that, because the state has played powerful roles in controlling the direction of Sharia, it has diminished the institutional independence of religious scholars to formulate a legitimate interpretation of Sharia.[46] In other words, Sharia has been moving towards its demise in the light of the shifts in the conception of legal authority introduced by the modern nation-state. Nevertheless, many authors have shown that the codification of Islamic law still allows different legal opinions within Islam to struggle to find a true articulation of Sharia.

The modern legal approach, characterized by a tendency towards a hierarchical, administrative understanding of the law has heavily

[43] Layish, 'The Transformation of the Sharīʿa from Jurists' Law to Statutory Law in the Contemporary Muslim World', pp. 87–8.
[44] Frank E. Vogel, *Islamic Law and Legal System Studies of Saudi Arabia* (Leiden/Boston: Brill, 2000), pp. 173–4.
[45] Iza R. Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State* (Chicago and London: The University of Chicago Press, 2016), p. 7.
[46] Wael B. Hallaq, 'Can the Shari'a be Restored?', in *Islamic law and the challenges of modernity*, ed. by Yvonne Y. Haddad and Barbara F. Stowasser (Walnut Creek: Altamira Press, 2004), pp. 21–53.

influenced the legal conceptions in Sharia.[47] The very moral values and legal elements enshrined in religious law have been turned into a more restrictive administrative state code. Furthermore, the fact that the idea of legal reform derives from the rise of Western scholarship in Islamic law has had the consequence of leading to a misunderstanding of how Islamic normativity ought to function in the legal reform process.[48] In efforts to avoid this misunderstanding, it is likely that a state has involved local religious scholars to provide legal framing and justification. The state power and religious authorities have worked together to make a selection of wide-ranging jurists' laws. At least two consequences have become apparent, despite the fact that the legislation has been no more than codifying preferred *fiqh* doctrines. Firstly, religious scholars have experienced a struggle to reach an authoritative legal interpretation within their own circle. Secondly, despite the involvement of the traditional Islamic jurists in preparing the contents, there have been persistent challenges to the state's authority to legalize religious law. The legitimacy of legislated Islamic law has emerged as a question because the ultimate decision about the content of the codification has lain in the hands of the state political power.

That said, in scholarly terms, the institutionalization of Sharia which has taken place in Muslim majority states, including Indonesia, has been a political and practical encounter.[49] This situation is not exclusive to Indonesia. Buskens has noted that the making of Moroccan family law has involved the public and the political debates.[50] In relation to this, Hallaq argues that the transformation of Sharia into

[47] Mohammad Fadel, 'State and Sharia', in *The Ashgate Research Companion to Islamic Law*, ed. by Rudolph Peters and Peri Bearman (Surrey, England: Ashgate, 2014), p. 94.
[48] Léon Buskens, 'Sharia and the Colonial State', in *The Ashgate Research Companion to Islamic Law*, ed. by Rudolph Peters and Peri Bearman (Surrey, England: Ashgate, 2014), p. 212.
[49] Léon Buskens, 'Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere', *Islamic Law and Society*, vol. 10, no. 1 (2003), p. 71; Léon Buskens and Baudouin Dupret, *The Invention of Islamic Law: A History of Western Studies of Islamic Normativity and Their Spread in the Orient*, ed. by Jean-Claude Vatin and François Pouillion (Leiden: Brill, 2014), p. 47.
[50] Buskens, 'Recent Debates on Family Law Reform in Morocco: Islamic Law as Politics in an Emerging Public Sphere', p. 123.

law results in what he termed "great synthesis".[51] This expression means that Islamic law has incorporated two aspects: traditionalism, that is, the ideas and norms indicated in the sacred texts, the Quran and prophetic traditions, and rationalism in the forms of scholarly consensus and analogical reasoning. A negative side to this legal-political process is that it has diminished the open scholarly discourse of Sharia[52] with respect to the pre-existing different *fiqh* schools (*madhhab*).

The legal reform of Islamic personal status (*al-aḥwāl al-shakhṣiyya*) in Indonesia has been far-reaching,[53] although it has involved the contesting of divergent religious and non-religious outlooks. Various scholars have contributed to our insights into particular contexts of this contestation. Jan Michiel Otto has argued that, despite the use of Sharia as the basis of the Indonesian marriage law, some provisions in it have encroached upon the patriarchal norms of classical doctrine.[54] Cammack has commented that the codifying of the law of the Islamic court has created an unstable accommodation between the modernists and the traditionalists in Islam and has changed the government's attitude towards Islam.[55] Furthermore, Hefner has also remarked that Sharia has been an arena of contestation in Indonesian society. These remarks suggest that Sharia is not a singular interpretation, but is composed of understandings which

[51] Wael B. Hallaq, *The Origins and Evolution of Islamic Law* (Cambridge: Cambridge University Press, 2005), p. 122.
[52] Léon Buskens, 'A Medieval Islamic Law? Some Thoughts on the Periodezation of the History of Islamic Law', in *O ye Gentlemen: Arabic Studies on Science and Literary Culture. In Honour of Remke Kruk*, ed. by A. Vrolik and J.P. Hogendijk (Leiden: Brill, 2007), p. 472.
[53] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*; Euis Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts* (Amsterdam: Amsterdam University Press, 2010); Mark Cammack, 'The Indonesian Islamic judiciary', in *Islamic Law in contemporary Indonesia: Ideas and institutions*, ed. by R. Michael Feener and Mark Cammack (Cambridge (Mass): Harvard University Press, 2007), pp. 146–69.
[54] Jan Michiel Otto, 'Sharia and national law in Indonesia', in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. by Jan Michiel Otto (Leiden: Leiden University Press, 2010), pp. 433–90.
[55] Mark Cammack, 'Indonesia's 1989 Religious Judicature Act: Islamization of Indonesia or Indonesianization of Islam?', *Indonesia*, vol. 63, no. April (1997), pp. 143–68.

derive from complicated factors, including conservative religious orthodoxy and *maqāṣid* (higher aims)-based approaches to Sharia.[56]

2.2. State Law

In the early years after Independence, the Indonesian state devoted most of its attention to the administration of civil private matters. Hence, it was in this period that marital relations came under the control of the state and this shift has led to political and religious debates over the last four decades.[57] A key turning-point has been the enactment of the Marriage Law in 1974.[58] This Law made family relations subject to the state by requiring civil registration, although the substantive rules of the Law were still influenced by religious doctrines.

The contest between religious law and the state law on marriage has resulted in a number of compromises. They include the legal obligation of marriage registration, the regulation of the minimum ages at which marriages can be performed, polygyny and the role of the judiciary in family law matters. The Law conceptualizes marriage at the crossroads between religious precepts and state administration.[59] The Law decrees that a marriage can only be valid

[56] Robert W. Hefner, 'Sharia Law and Muslim Ethical Imaginaries in Modern Indonesia', in *Sharia Dynamics: Islamic Law and Sociopolitical Processes*, ed. by Timothy P. Daniels (Cham: Springer International Publishing, 2017), pp. 91–115.

[57] Mark Cammack, Lawrence A. Young, and Tim B. Heaton, 'Legislating Social Change in an Islamic Aociety: Indonesia's Marriage Law', *The American Journal of Comparative Law*, vol. 44, no. 1 (1996), pp. 45–74; Mark Cammack, Helen Donovan, and Tim B. Heaton, 'Islamic Divorce Law and Practice in Indonesia', in *Islamic Law in Contemporary Indonesia: Ideas and Institutions*, ed. by R. Michael Feener and Mark Cammack (Cambridge, MA: Harvard University Press, 2007), pp. 99–127.

[58] Kate O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law* (London and New York: Routledge, 2009); Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth'.

[59] Cammack, Young, and Heaton, 'Legislating Social Change in an Islamic Aociety: Indonesia's Marriage Law'; June S. Katz and Ronald S. Katz, 'Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited', *American Journal of Comparative Law*, vol. 26, no. 2 (1978), pp. 309–20.

after it has been performed according to the precepts of the religion of the bride and groom. Conformity with religious prescription is a must and unavoidable. However, in addition to religious compliance, a marriage needs to be authorized by the state, which is done by the act of registration.[60] The contest between religion and the state in divorce is not as strong as that in marriage. Women in Indonesia often have no choice but to go to court to petition for divorce or to request a divorce decree or certificate,[61] as they have to depend on the state authority to declare their divorced status. As a consequence, those who wish to obtain a divorce extra-judicially also have to go to court if they want to obtain a formal divorce certificate.

Legal and human rights approaches are often brought into play to support the substance of marriage registration.[62] The problems caused by unregistered marriage, for instance, have been closely connected with violations against the rights of women and children born out of legal wedlock. This approach is in line with the general orientation of the legal reform after the political transition in 1998, albeit it has had a less revolutionary impact on Islamic family law, which has strengthened the continuing improvement of the position of women in the matrimonial sphere.[63] Nonetheless, public debates about it still revolve around the contest between 'religious validation' and 'legal authorization'. This tendency features very strongly in the *fatwa* discourse.

Apart from what has just been described, various issues and cases relating to family law have to do with how the legal norms imposed by the state are interpreted, practised and negotiated by legal actors, be

[60] Nani Soewondo, 'The Indonesian Marriage Law and its Implementing Regulation', *Archipel*, vol. 13 (1977), pp. 283–94.
[61] Euis Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce', *Islamic Law & Society. 2013*, vol. 20, no. 3 (2013), p. 256.
[62] Jayne Curnow, 'Legal Support Structures and the Realisation of Muslim Women's Rights in Indonesia', *Asian Studies Review*, vol. 39, no. 2 (Routledge, 2015), pp. 213–28; Ingrid Westendorp, 'Personal Status Law and Women's Right to Equality in Law and in Practice: The Case of Land Rights of Balinese Hindu Women', *Journal of Human Rights Practice*, vol. 7, no. 3 (2015), pp. 430–50.
[63] Mark Cammack, Adriaan W. Bedner, and Stijn van Huis, 'Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia', *New Middle Eastern Studies*, vol. 5 (2015), pp. 1–32.

they judges, litigants or lawyers. Facts emerging from court hearings, judges' decisions and court reports have been the source of many heated debates in Indonesia. The problem revolves around how a judge of the Islamic court, bound by state laws, refers to a normative understanding of classical *fiqh* treatises or how he goes about adopting norms to introduce change into local practicalities.

My study finds that, in terms of marital administration, the government has endeavoured to initiate legal changes through the civil administration. Acutely aware of the fact that any proposal for legal reform is always sure to spark controversy, the government has thought it best to begin to approach Muslim marriage within the framework of citizens' rights. Hence, the government does not deal with the legal status of a marriage directly, but with the consequence of an altered legal status to the rights which a citizen can claim (Chapter 1). This shift has enabled the government to improve the efficacy of its marriage bureaucracy and encouraged people to depend more fully on its authority in seeking to arrange their marital affairs. Nevertheless, this effort has not succeeded in entirely changing people's behaviour in particular societal contexts (Chapter 5).

Alongside the role of the civil administration in this direction, Islamic courts have also remained a significant factor in helping women obtain their rights. Studies done by John Bowen,[64] Stijn van Huis[65] and Euis Nurlaelawati[66] have indicated the important role played by Islamic courts in protecting the rights of women. Bowen notes "…but judges on Islamic and civil courts alike have tried to balance claims made in the name of Islam against those made in the name of *adat*…".[67] Studying legal cases in the Isak community in Aceh, Bowen arrived at the conclusion that judges in both public and Islamic

[64] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 6.
[65] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba'.
[66] Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce'; Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*.
[67] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 6.

courts have translated cultural ideas of fairness and agreement, namely social consensus, into their justification of gender equality.

Furthermore, focusing on the functioning of Islamic courts in West Java and South Sulawesi, Stijn van Huis has argued that, despite the different political landscapes in these two areas, Islamic courts demonstrate the same tendency towards granting a divorce on the concept of a 'no-fault divorce', in which the judges adopt a lenient approach towards divorce. This change means that women now have an equal position in divorce proceedings irrespective of their social position. Even more importantly, Islamic courts now have enough room to create legal changes through reinterpretations of Islamic concepts in judicial processes.[68] Nevertheless, this positive development does not necessarily determine the future of legal reform. Any legal reforms still need to maintain certain normative boundaries in the judicial tradition of Islamic courts if they are to be accepted. Nurlaelawati, who studied the use of the KHI by judges in Islamic courts, found that the judges are often inclined to go along with the interests of those seeking justice in the courts and their attitude means that transgressions against the rules interpreted by the State are unavoidable.[69]

The key role played by Islamic courts is evident in other Muslim countries too. In the context of 'progressive' Tunisian family law, Maaike Voorhoeve has argued that the state-promoted family law is relative, since there is a wide diversity in its application. Judicial discretion also still exists on different levels.[70] In the Egyptian context, Lindbekk has suggested that judicial practice in divorce shows a move towards an increased standardization in the implementation of family law because of a closer unity between state law and religious morality and this is advantageous to the interests of women. What I can

[68] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 263.
[69] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 224.
[70] Maaike Voorhoeve, 'Judicial Discretion in Tunisian Personal Status Law', in *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. by Maaike Voorhoeve (London: I.B. Tauris, 2012), pp. 199–229.

pinpoint from these studies is the increasing roles played by the state agencies in protecting the legal status and the rights of women. My study also confirms these findings when it examines the quest for the state recognition of unregistered marriages (Chapter 6).

By contrast, O'Shaughnessy, who studied divorce cases in Indonesia from 1974 to 2005 on the basis of court reports and printed sources, arrived at very different conclusions. She argues that the Marriage Law was designed to discourage divorces, by making not only the terms for acceptance in courts but also their administration more complicated. O'Shaughnessy has concluded that women's divorces during and post-Soeharto era could be construed as a threat to the state power's ideology of marriage and family. She said "divorce was publicly and legally constructed as a menace to local and national stability".[71] I do agree with Bowen's, van Huis' and Nurlaelawati's arguments on the roles of Islamic courts in protecting women's rights. By contrast, I find O'Shaughnessy's conclusion is a bit exaggerated. My findings suggest that judicial divorce is not a danger to social stability. Instead, by seeking judicial divorces women are able to define their legal status and to claim citizens' rights and obtain proper access to state services.

Researchers have also paid attention to the question of the extent to which a Muslim marriage is linked up to people's orientations on the understanding of what constitutes a proper marriage, especially on the micro-Muslim community level. In social practice, religious laws have been given priority, while local cultures (*adat*) are also often entangled with Islamic tenets.[72] Many studies on child marriage,[73] marriage and

[71] O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*, p. 199.

[72] Harry J. Benda, 'The Structure of Southeast Asian History: Some Preliminary Observations', *Journal of Southeast Asian History*, vol. 3, no. 1 (1962), p. 120; M.B. Hooker, *Islamic Law in Southeast Asia* (Singapore: Oxford University Press, 1984), pp. 8–15; Kristine Kalanges, *Religious Liberty in Western and Islamic law: Toward a World Legal Tradition* (Oxford: Oxford University Press, 2012), p. 4.

[73] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns'.

religion,[74] marriage among educated urban Muslim teenagers[75] and informal marriage and gender[76] have proposed the centrality of religious law. Summing up their study of child marriage, Grijns and Horii concluded that the continuing practice of child marriage is sustained by religious interpretations made by conservative Muslim groups in their efforts to deal with adolescent sexuality. In line with this argument, Nisa emphasizes that religious piety and religious homogamy continue to be important factors which shape marriage in certain Muslim communities. Bianca Smith, who studied divorce among women who live in *pesantren,* remarked that these women possess religious capital which allows them to avoid the state law on marriage.[77] In this *pesantren*, these women petitioned divorce informally and remarried in an Islamic manner, outside the formal procedure.

Moreover, Platt has explored the reasons the Marriage Law as a project of modernity has failed to make an impact in the Indonesian island of Lombok. The variety of women's experiences she has come across indicates the centrality of community-based law in shaping the marital trajectories for women.[78] Her finding of the centrality of community-based law is very relevant to my study. In terms of the everyday practice of marriage in the community I am studying, I found a similar tendency to accord religious norms and the fundamental roles played by informal actors, namely *kyai* and *pengarep* (Chapter 4).

[74] Eva F. Nisa, 'Marriage and Divorce for the Sake of Religion: The Marital Life of Cadari in Indonesia', *Asian Journal of Social Science*, vol. 39, no. 6 (2011), pp. 797–820; Myengkyo Seo, 'Falling in Love and Changing Gods: Inter-religious marriage and religious conversion in Java, Indonesia', *Indonesia and the Malay World*, vol. 41, no. 119 (2013), pp. 76–96.
[75] Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth'.
[76] Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*.
[77] Bianca J. Smith, 'Sexual desire, piety, and law in a Javanese pesantren: Interpreting varieties of secret divorce and polygamy', *Anthropological Forum*, vol. 24, no. 3 (2014), pp. 37–41.
[78] Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 148.

2.3. The Bureaucratization of Muslim Marriage

The bureaucratization of Muslim marriage by requiring its registration should be looked at as one of the ways in which the state is implementing its ideas of legal validity. Undeniably, the government's intervention in marriage through this push towards bureaucratization has been regarded by women's groups as a significant move to emancipate family law.[79] Nisa has argued that the issue of legal marriage has consistently presented a major problem for the government[80] and the frequency of unregistered marriage "has been the real test of the bureaucratization of religion in Indonesia."[81] In its efforts to achieve a balance, the government's efforts to accommodate people's understandings of Islam has led it to occupy an ambiguous position on the issue of unregistered marriages.

Numerous scholars have delved into this issue. Dominik Muller has defined the bureaucratization of religion (Islam) as the ways "state actors have empowered state-funded 'administrative' bodies in diverse ways to guide and influence Islamic discourses and regulate matters of religion and morality in the public sphere in accordance with their political interests."[82] Researching religious education in Egypt, anthropologist Gregory Starrett argues that, when it imposes bureaucratic categories, the state not only objectifies religion, it also functionalizes religion. This functionalization refers to "processes of translation in which intellectual objects from one discourse come to serve the strategic or utilitarian ends of another discourse".[83] Of course, this begs the question of what purposes and whose interests

[79] June S. Katz and Ronald S. Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems', *American Journal of Comparative Law*, vol. 23, no. 4 (1975), pp. 653–81; Siti Musdah Mulia and Mark Cammack, 'Toward a Just Marriage Law: Empowering Indonesian Women through a Counter Legal Draft to the Indonesian Compilation of Islamic Law', in *Islamic Law in Contemporary Indonesia: Ideas and Institutions* (Cambridge, MA: Harvard University Press, 2007), pp. 129–145.

[80] Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', p. 309.

[81] *Ibid.*, p. 291.

[82] Dominik M. Müller, *The Bureaucratization of Islam and its Socio-Legal Dimensions in Southeast Asia: conceptual contours of a research project*, no. 187 (Halle, 2017), p. 2.

[83] Gregory Starrett, *Putting Islam to Work: Education, Politics, and Religious Transformation in Egypt* (Berkeley: University of California Press, 1998), p. 9.

the bureaucratization of Islam serves.[84] For their part, Sezgin and Künkler argue that governments are interested in managing religion for socio-economic and social-engineering purposes.[85] These ideas about the bureaucratization of Islam are helpful in understanding the political dimension of actors involved in marriage registration whom I present in Chapter 5.

In the end, the bureaucratization of Muslim marriage is invariably concerned with how the state interacts with *ulama* in a given setting. We know from Stijn van Huis's study that, in West Java in the mid-nineteenth century, a symbiotic relationship between the colonial state, the indigenous *priyayi* (social elite) rulers and the landowning class of *kyai* (traditional religious leaders) came to an end when the colonial government tried to increase its control of the autonomous *kyai*. This inevitably led to a tense relationship between the *kyai* on the one hand and the colonial government and the *priyayi*, including the *penghulu*, on the other.[86] Despite their predicament, the *kyai* managed to maintain their position, lived in rural areas and continued to enjoy their status as the social elite. They commenced a social process of making a distinct community and of producing a certain type of Islamic understanding. After Indonesia declared its Independence, the Ministry of Religious Affairs tried to incorporate *kyai* into its ranks, but it did not manage to change their autonomous behaviour in their dealings with everyday religious matters significantly, since many of them still viewed the state institutions as competition to their religious authority.

Examining this relationship has led Nurlaelawati to a different conclusion, namely: that state *penghulu* and their KUA (Kantor Urusan Agama, Office of Religious Affairs), an office on a sub-district level which deals with Muslim marriage registration, have been an agency

[84] Mirjam Künkler, 'The Bureaucratization of Religion in Southeast Asia: Expanding or Restricting Religious Freedom?', *Journal of Law and Religion*, vol. 33, no. 2 (2018), p. 193.
[85] Yüksel Sezgin and Mirjam Künkler, 'Regulation of Religion and the Religious: The Politics of Judicialization and Bureaucratization in India and Indonesia', *Comparative Studies in Society and History*, vol. 56, no. 2 (2014), p. 472.
[86] Read chapter 5 of van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba'.

which intermediates the relationship between *ulama* and the Islamic courts. The KUA officials, she argues, consider themselves the guardians of Sharia and of the interpretations of *ulama* rather than as state officials. The upshot has been that the KUA's views on marital problems are rooted in local society.[87] However, my study seems to confirm van Huis's remarks. Rather than taking sides with the *kyai*, *penghulu* stands firmly on the side of the state and does not act as the bridge between *ulama* and the Islamic court. As a result, some *kyai* have still preserved their own perception of religion and have challenged the state law when they consider that it has interfered too much in people's religious life (Chapter 4 and Chapter 5).

In this study, my goal is to understand how the state agencies interpret and implement the state laws on marriage. Therefore, I look at the roles played by *penghulu* and the whole everyday bureaucracy of the KUA. Besides my interest in the state *penghulu*, I also analysed the position of *modin* (village religious officials dealing with Muslim marriage) who, in my opinion, act as the fundamental informal actors. I use street-level bureaucrats to represent both *penghulu* and *modin*. In terms of Muslim marriage, they are frontline officials who interact directly with Muslim citizens and function as an essential link between the government and the people.[88]

Modin are responsible for intermediating for people with both the state law and religious law. In other words, *modin* assist in adjusting people's religious orientation towards the state law. In terms of marriage administration, *modin*, who were appointed by village head used to work as PPPN or P3N (Pembantu Petugas Pencatat Nikah, assistant to the marriage registrar). Their main task was to assist the work of PPN or P2N (Petugas Pencatat Nikah, marriage registrar) who is the head of the KUA. In the last few years, the position of the *modin* as P3N has been discharged by the government (Chapter 2). However,

[87] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 189.
[88] Michael Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services* (New York: Russell Sage Foundation, 2010), p. 3.

the loss of their legal status as P3N has not really affected their socially acknowledged roles in the marriage ceremony (Chapter 5).

Furthermore, I also look at the judicial practices in the local Islamic court and examine how judges deal with a socially disruptive problem like *isbat nikah* (retrospective authentication of marriage) for unregistered or informal marriages. *Isbat nikah* is a judicial procedure introduced by the KHI which allows people to legalize their unregistered marriages retroactively. Upon the approval of *isbat nikah*, unregistered marriages turn into legal marriages (*nikah resmi*).

The relationship between legal norms and agencies in a Muslim marriage on different levels of society is visualized in the following diagram:

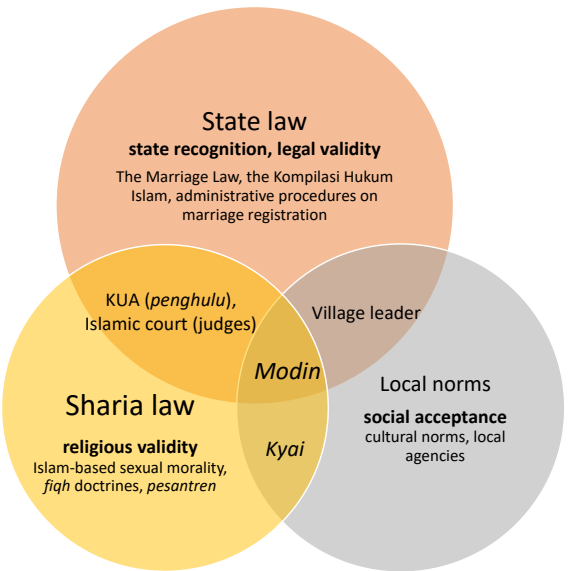


Figure 0.1. The relationship between legal norms and agencies in Muslim marriage in Indonesia

3. Research Focus

This study deals first and foremost with the practical dimensions of Muslim marriage and their bureaucratization. Before launching into it, it is important to explain how I have approached Islamic law on

marriage. This thesis regards Islamic law on marriage as a system of norms constructed and transformed over historical time by the activities of individuals as well as by larger social processes. This approach follows Dupret's assertion that Islamic law is found not only in the diverse legacy of Sharia and *fiqh* treatises, but also in what people, Muslims in particular, think about Islamic law. The task of researchers, in his view, is not to make a claim about whether or not people's conception and practices are in compliance with the pristine religious teachings, but describing in what ways they conceptualize Islamic law.[89]

Besides focusing on the debate on legal reform, this study investigates the practices and the negotiations which are an integral part of Muslim marriage. The second question guiding this research, as already stated earlier in this Introduction, can be developed into: *how do local people on the northern coast of rural eastern Java practise and negotiate state regulations on Muslim marriage in their everyday life?* Here, I use 'everyday' to give an emphasis to what Schielke and Debevec have called "the openness of practices and experiences",[90] so as to attain a better understanding of the daily practice of Sharia. The term 'everyday' guides our attention towards the ways in which Muslims produce their own modernity[91] in everyday life.[92] Applying this framework, the practice of Muslim marriage, the core object of this study, is placed at the intersection of social, cultural, legal and economic practices.[93]

[89] Baudouin Dupret, 'What is Islamic law? A praxiological answer And an Egyptian Case Study', *Theory, Culture & Society*, vol. 24, no. 2 (2007), pp. 79–100.
[90] Samuli Schielke and Liza Debevec (eds), *Ordinary lives and grand schemes: an anthropology of everyday religion* (New York and Oxford: Berghahn Books, 2012).
[91] Modernity is understood as an age that began with the emergence and expansion of capitalism, industrialisation, scientific rationalism, nationalism and state claims to military power and the surveillance of citizens. Anthony Giddens, *The Consequences of Modernity* (Chicester: Polity Press, 1991).
[92] Armando Salvatore and Dale F. Eickelman, 'Muslim publics', in *Public Islam and the Common Good*, ed. by Armando Salvatore and Dale F. Eickelman (Leiden: Brill, 2004), pp. 3–27.
[93] Benjamin Soares and Filippo Osella, 'Islam, Politics, Anthropology', in *Islam, politics, anthropology*, ed. by Benjamin Soares and Filippo Osella (London: Royal Anthropological Institute, 2010), pp. 1–22.

First of all, the discussion on 'how the state governs centres on the more detailed enquiries into the process of law-making and the implementation of laws on marriage and charts the bureaucratization of marriage. Secondly, the term 'practise' refers to how marriage is perceived and performed in the everyday life of a Muslim community in Pasuruan. It tries to capture the role and influence of Sharia and those of local norms in the shaping of marriage practice. To achieve this research goal, I have focused on the roles played by religious leaders (*kyai*) and *pengarep* (a voluntary broker who mediates the communication between the families of the bride and the groom). Thirdly, the term 'negotiate' refers to the interaction between the state and society within the parameters of the state norms. This thesis investigates the legitimacy of the *penghulu* who are the key official actor in marriage registration, the position of *modin* and how local people deal with them. 'Negotiate' also refers to the ways in which villagers seek legalization of their unregistered marriages, either in the KUA or in the Islamic court.

This thesis is conceptually indebted to Bowen's idea of "public reasoning", a theoretical concept which provides the basis for an inclusive public dialogue in pluralistic societies,[94] in the sense that it attempts to discover a sphere of overlapping discourses and shared ideals on marriage, both vertically upwards from the village level to the national scene and horizontally across between different normative systems. This idea leads me to ask a more theoretical question: *What can we learn from the practices and the negotiations in such a given society?* By posing this question, I expect to be able to relate the issue of Muslim marriage to a wider debate about Sharia and the nation-state as well as the bureaucratization of marriage.

At this point, I need to clarify the important distinction between 'Islam' and 'Muslim' as I have used these terms in this book. In Indonesia, Islam is expressed in different forms. Diverse kinds of Islam are (re)produced in society and there is no single 'essentialist' Islam

[94] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*.

based on religious texts and Islamic history.[95] This is why I prefer the term 'Muslim marriage' instead of 'Islamic marriage'. The community I have studied practises a variant of Islam which is close to so-called traditionalist Islam. It is an Islam which encourages the observance of one of the four schools in Sunni Islamic jurisprudence, while at the same time greatly respects religious leaders (*kyai*) and the traditional Islamic schools (*pesantren*) they run as centres of learning. However, in the social realm, their religious activities are quite accommodating towards local traditions. Secondly, the word 'Muslim' has been chosen to emphasize the diversity in practices of marriage. This is because, according to Benjamin Soares, by focusing on local culture, Islam as an object of study seems to become a plural phenomenon.[96]

4. Research Site

I opted for Pasuruan as the site of my research. Pasuruan is a regency in East Java province the majority of whose inhabitants live in Muslim communities and generally show a strong orientation towards practising so-called traditional Islam,[97] especially that associated with Nahdlatul Ulama (NU), an Islamic organization established in Surabaya in 1926. This religious orientation is supported by the fact that many Pasuruan residents' roots lie in the island of Madura, where the NU is also very influential.[98] However, my research focuses on Sumbersari (a fictitious name), a sub-district in Pasuruan. The majority of the people who live here are pious believers (*santri*). Culturally this community has developed into be what is popularly known as a *pendhalungan* society. The people speak Madurese and Javanese or a mixture of these and Indonesian with Madurese accent. Only the younger generation who were born in the 1980s and thereafter can speak Javanese.

[95] Michael Gilsenan, *Recognizing Islam: Religion and Society in the Modern Middle East* (London: I.B. Tauris, 1982).
[96] Benjamin F. Soares, 'Notes on the anthropological study of Islam and Muslim societies in Africa', *Culture and Religion*, vol. 1, no. 2 (2000), pp. 277–85.
[97] Zamakhsyari Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java* (Tempe: Arizona State University, 1999), p. xix.
[98] Yanwar Pribadi, *Islam, State and Society in Indonesia: Local Politics in Madura* (London and New York: Routledge, 2018).

One specific feature of this community is the importance of maintaining patron-client ties. The patron is a *kyai* and his clients are the people in general. *Kyai* are traditional religious leaders who are paid the greatest respect by the community for their religious learnedness. Most of them lead *pesantren* (traditional Islamic schools). *Kyai* are not only invested with religious authority but, referring to Geertz, also play the roles of cultural broker. The existence of both *kyai* and *pesantren* has contributed to the continuation of adherence to traditional Islam, which is also supported by the presence of *madrasah diniyah* (informal Islamic schools). Children attend this *madrasah* in the afternoon after they have finished formal school in the morning. In this *madrasah*, they are taught the Quran and other Islamic subjects. In Pasuruan, the Regent has issued a decree which obliges children at primary and secondary schools, who do not board in *pesantren*, to attend this *madrasah*. A more detailed explanation of the research setting comes in Chapter 3.

5. Research Method

In order to make a good anthropological (or social-legal) examination of marriage practices in a Muslim community, this study was carried out with open, lived and dialogical fieldwork which has ensured the depth of people's personal experiences. This choice has everything to do with doing justice to the people with whom I have been working. For this reason, this study employs a number of methods, ranging from participant observation, open interviews and case studies. I also used life-history to describe the informant's experiences in concluding marriages.

I conducted my fieldworks in separate periods, namely seven months in 2017 (January to July), four months in 2017 and 2018 (November to February) and two months in 2019 (January to February). In order to understand people's everyday practices, I lived in a village, interacted with local people and participated in social activities. I interviewed my interlocutors whom I have divided into three hierarchal categories:

a. Village level which includes women (unmarried, married, widows and divorcées), children, parents, men, religious leaders (*kyai*), village religious officials (*modin*), village officials (*lurah* and *carik*), heads of neighbourhoods and marriage brokers (*pengarep*);
b. Sub-district level, which includes the Kantor Urusan Agama (KUA, the Office of Religious Affairs), the state body whose function is to register and legalize Muslim marriage. I conducted a host of interviews with *penghulu* (marriage functionaries) and the officials of the KUA of Sumbersari in Pasuruan district, collected data on marriage practices in 2015 and 2016 on the basis of official records, made categorizations, highlighted cases remarkable in an administrative sense and traced their context in society. One central question addressed is the extent to which the KUA plays a role in interpreting and performing the state rules on marriage and negotiates with the variety of religious and cultural norms in society. On order to make a comparison with Sumbersari, I also studied other KUAs in different districts such as in Jember, Surabaya and Yogyakarta.
c. District and upper level, includes state institutions (the Central and District Department of Religious Affairs and the Office of Civil Registration), the judiciary (the local Islamic court) and religious institutions. My questions dealt with their decisions, *fatwas* and guidance pertaining to Muslim marriage.

Pasuruan regency was not really new to me, but Sumbersari was. My fieldwork began through my acquaintance with a lady, Umi, a graduate of an Islamic university in Surabaya whose bachelor's thesis dealt with the incidence of *nikah sirri* in Sumbersari. With the assistance of Umi, I managed to interact with local people. This process became easier as numerous young women of Sumbersari were Umi's friends when they studied in *pesantren* years earlier. With their help, I conducted interviews with ordinary villagers about their experiences in marriage. I also made a contact with Ali Sadikin, an NGO activist who

has focused on women's issues in the area. Ali Sadikin introduced me to a number of 'active' women. From their information, I was able to understand how the social structure works in practice and to what extent personal agency contributes.

Researching a government institution like the KUA is not always easy. In my efforts, I applied a structural approach. First of all, I made contact with my senior who acted as the manager of the KUA in the town of Pasuruan. He introduced me to his fellow-co-ordinator in the Pasuruan regency. This contact gave me access to the local KUA in Sumbersari. I used informal interaction when dealing with the head of the KUA and his staff. On the basis of informal interaction, I managed to obtain the information I needed. This fieldwork was quite effective because sometimes I was allowed to lodge in the KUA enabling me to extend my interaction and have satisfactory talks with its officials. Doing fieldwork in the KUA also enabled me to get to know *modin*. I also attended several monthly religious gatherings (*pengajian*) which they held.

It is worth noting that I used different identities depending on what kind of institution I was addressing. When visiting *kyai* or *pesantren*, I had to use a religious identity. My status as a member of the NU in the Netherlands gave me advantages. At least, I was not treated as a 'different' person because the majority of them are also affiliated with the NU. When doing fieldwork in the Islamic court, I used a more formal approach, as was expected of me. My position as a lecturer in the Sharia faculty of an Islamic university in Central Java was an advantage to me. In general, the relationship between Sharia faculties and Islamic courts is close because it is the faculty which produces judges and clerks of the court.

In addition to the interviews, I also did participant observation in social activities, prior to and during a marriage ceremony (*akad nikah*), which took place either in the KUA office or at a location outside it. I focused on the process of registration, the verification of documents (*rafak*), the actors involved and the handling of the marriage contract (the position of *penghulu* and *modin*).

Recording and making notes are important in ethnographic work. However, in my fieldwork, the use of each of them has been entirely dependent upon the situation; but the second is more preferable. I had to reconsider whether or not to make recordings of interviews with ordinary people as it was possible that introducing this note of formality might make them feel uncomfortable and interrogated. Even making notes could destroy the interview process. In this situation, instead of making notes in detail, I jotted down some key ideas and worked up the notes afterwards.

6. Structure of the Thesis

This thesis begins with an introductory chapter. It contains an explanation of the background to this study, a general overview of key concepts relevant to it, research questions, methodological notes and the structure of the thesis.

The six chapters in this thesis are divided into two parts, each of which focuses on a different level of society. The first part is concerned with law and institutions. It investigates public debates about the norms expected in Islamic marriage on the national level and issues arising from the bureaucratic reform of the administration of Muslim marriage. The first part consists of two chapters.

Chapter 1 centres on continuity and change in the shaping of legal norms on Muslim marriage. This chapter seeks to elucidate the current developments by which the state simultaneously deals with the issues of religious-legal validity of a marriage and the protection of citizens' rights. In the Indonesian context, the public discourse about *nikah sirri* (unregistered marriage) has epitomized the dichotomy between the religious validity and the legal validity of an Islamic marriage. This chapter argues that the state-led modernization of Islamic marriage in Indonesia has moved away from the public debate about the dual validity of a marriage, religiously and legally, to a public debate about legal identity and citizens' rights. The state has not necessarily made attempts at legal reform by modernizing traditional *fiqh* norms on marriage by passing of legislation. Instead, it has chosen to endorse its

bureaucracy in encouraging the possession of civil documents such as marriage or birth certificates which protect citizens' rights. In this process, the question of the legal validity of a marriage becomes irrelevant. However, an unprecedented consequence of this development is conflict between state legal norms.

Chapter 2 is concerned with the modernization of the bureaucracy in charge of organizing Muslim marriage, a task carried out by the KUA under the supervision of the Ministry of Religious Affairs (MoRA). In this chapter, I look at the influence of the shifting public discourse on the regulation of Islamic marriage to the bureaucracy supervising Muslim marriage. It is worth noting that there have been series of efforts made by the MoRA to reform the KUA so as to introduce more efficient management. In the spirit of good governance, the government has eradicated the informal administration fee and standardized the disparities in administration fees. Marriage registration has been integrated into the civil administration system. The MoRA sanctions *penghulu*, a bureaucratized religious leader, the only official eligible to head the KUA, to solemnize an Islamic marriage.

The second part, consisting of four chapters, focuses more on the functioning of the state law and how local society responds to it. On a practical level, it elucidates the ways the state agency interprets and implements the relevant legal norms in its everyday bureaucracy and tries to understand how it deals with people's orientations towards Islamic marriage. In this part, I seek to present 'plentiful pictures' of the people's individual orientations towards marriage as well as examine the roles of the state authorities and non-state authorities in dealing with marriage practice.

Chapter 3 offers an introduction that can assist in understanding the socio-economic history, the religious and cultural life and the development of Islam in Pasuruan. It first sets the scene by delineating the historical development of Pasuruan, including the history of Madurese migration and the historical development of Islam. Secondly, it addresses current cultural, religious and political life. The

last section centres on specific elements of the community in which I did my fieldwork.

Chapter 4 is concerned with the interaction between the legal and social norms affecting marriage and how the actors involved negotiate marriage in a patrimonial social setting. In this chapter, I elucidate the roles played by religious leaders and social actors such as *pengarep*. This chapter suggests that marriage remains a religious concern, a sacred ceremony which sets a higher value on the involvement of religious authorities than those of the state. Despite the homogenous tradition of Islam in the area, this chapter has discovered an internal heterogeneity in the relationship between the agency of the actors involved, cultural norms and the social structure in the selection of whom to marry.

However, in all classes, ideas about an ideal spouse are closely related to the discourses circulating within traditional Islam, as *pesantren* (traditional Islamic school) are the centres of knowledge production. We see that, while *pesantren* have been an important institution in maintaining the *fiqh*-based orientation of marriage, being a *santri* (student of *pesantren*) is a guarantee signifying the purity of a girl and that she is of unimpeachable morals. Marriage practices in Sumbersari show that the accomplishment of the ideals of marriage depends heavily on the role of the *pelantar* (traditional marriage broker). Entrusted with a major role in mediating the communications between the two families concerned, *pelantar* are very important to families of the religiously respected class as well as families whose girls have been educated in *pesantren*. Another key actor in a marriage is definitely a religious leader (*kyai*). The everyday practice of marriage in Sumbersari shows the on-going centrality of the roles of *kyai* in the production of an Islam-based legal norm to control sexual morality which sometimes conflicts with the state legal norm.

Chapter 5 analyses the interaction between the state and society in marriage registration. It deals with the position of the KUA and the roles of street-level bureaucrats, *penghulu* and *modin* in marriage registration. In this chapter, I argue that the KUA, as the state agency in charge of Muslim marriage registration, needs to maintain its image

as a body capable of maintaining the proper balance between marriage, religious tradition and modern administration. In the meantime, there has been a tendency for the state to override and terminate the roles of *modin* as informal intermediaries on the grounds of public service and good governance. In line with this tendency, a new policy has been drawn up: marriage in the office is free, while out-of-office costs some money. This bureaucratic reform had led to a dilemma as people have had to try to negotiate it to fit their own interests. People still differentiate between marriage registration as a religious process in which religious leaders are involved and the marriage ceremony as opposed to an administrative process in which *penghulu* play a role. The *modin* are central to mediating these two processes. On the other hand, *penghulu* are still struggling to extend their influence. A *penghulu* does not pretend to perceive himself as an *ulama*, although his identity as a religious authority remains important. In order to maintain his legitimacy, he is consistent in advocating the state recognition of a marriage which contributes to the protection of citizens' rights.

Chapter 6 deals with unregistered marriage and the search for state recognition. This chapter focuses on cases of participants in unregistered marriages who have sought state recognition by registering their marriage at the KUA or obtaining an authentication (*isbat nikah*) from an Islamic court. These cases have enabled me to think critically about the relationship between civil documents, state recognition and citizens' rights from the perspective not only of the people, but also from that of the other side: the state apparatus and the judges. Because some of the cases involve problems arising from lack of documents, they suggest another aspect might be to take a look at administrative transgressions and judicial discretion. This chapter argues that people are not really concerned about the legality of marriage. They request legalization in order to define the legal status of their marital relationship because there is a need for them to do so. They are concerned with the benefits which accrue from the possession of civil documents.

This thesis ends with Concluding chapter in which I summarize and discuss my research finding.

Part One

LAW AND INSTITUTION

CHAPTER 1

Regulating Muslim Marriage in Indonesia

1. Introduction

For many years the legal and religious validity of Muslim marriages and the relationship between these two aspects have been subject to debate in Indonesia. This chapter addresses a number of questions arising from this issue to do with actors, discourse and process. They are the following: *Who have been involved in the debates*? *What language has been used*? *How does the state deal with the different interpretations produced by Muslim leaders*? In essence, these questions replicate the insistence common among Muslims in Indonesia that, despite the codification of Islamic marriage law by the state, marriage should still include a religious component. This is an important requirement for the majority of Muslims for whom the Sharia is the frame of reference they believe should be their guide to morality and human relations. Their concern is not unfounded since the legal transformation from uncodified Sharia law to the codified form of Islamic law has occasionally unquestionably expunged religious norms.[1] The elephant in the room is that Muslim majority countries cannot escape the need to systematize uncodified Sharia into

[1] Peters, 'From Jurists' Law to Statute Law or What Happens When the Shari'a is Codified', p. 90.

Islamic state law to be able to deal with the various problems thrown up by modern development.

An important part of this chapter looks at the continuity and change in the formulation of the legal norms on Muslim marriage in Indonesia, particularly since the fall of Soeharto in 1998. Its principal focus is the roles of the state and Islamic authorities in their struggle to define what defines an appropriate Islamic marriage in Indonesia on both national and sub-national levels. In this chapter, I wish to present an analysis of laws, political processes, local regulations and religious opinions.

As many have suggested, articulations of Sharia laws on marriage and their embodiment in a legal code continue to feature largely in negotiations between the state and religious authorities about different legal norms. Although this is a persistent problem in numerous Muslim majority countries, the Indonesian experience offers some interesting unique features. I have found that, while the process of legal reform has involved the secularization of religion in the state law, the post-New Order era has witnessed the increasing application of religion-inspired ideas in national and sub-national laws. Unquestionably, the government has faced a steep learning curve in its pursuit of legal reform through legislation because of the resistance from certain Islamic authorities. In this predicament, in line with the outgrowth of the human rights movement and bureaucratic reform, the judiciary and government bureaucracy have been important agents in facilitating reform without causing a confrontation with religious norms.

This chapter is divided into five stages. The first section provides a theoretical framework by presenting a general overview of the transformation of Sharia into state Islamic law throughout the Muslim world. The second section sketches how the Indonesian state deals with Muslim marriage. The third section focuses on the post-New Order development. In this section, I problematize the use of Islam as identity politics and how this choice has influenced legal reform on matrimonial matters on national and sub-national levels. The fourth section deals with the contestation of *maṣlaḥa* in legal discourses in

the form of *fatwas* on marriage registration produced by Islamic organizations in Indonesia. The fifth section analyses the reforms introduced by the executive power in response to insistence on the protection of citizens' rights.

2. A Legally Valid Marriage: Dilemmas and Compromises

In the course of nineteenth-century colonialism, within the compass of the establishment of nation-states and the implementation of the European legal framework, the political rulers of numerous Muslim countries, for instance, in Egypt and the Ottoman heartlands intervened in the application of Sharia.[2] This political action resulted in the transposition of Sharia norms, predominantly those relevant to personal status, into a state-legal framework.[3] At first glance, the formation of a state Islamic personal status looks simple,[4] because it elicited great respect from Muslim groups. For the majority of Muslims, the legal reform of Islamic personal status meant the preservation of Sharia law.[5] In fact, the legal reform generated a high degree of complexities. Throughout the history of Islam, Sharia law had never been codified. *Fiqh* has never been a law code ratified by legislative authority. Therefore, in order to achieve unified rules and legal uniformity, governments have to transform Sharia from scattered, locally administered sets of substantive laws into state-centred Islamic legal codes. In other words, the codification has transformed what are divine norms in Muslim societies into positive law.[6]

[2] Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 2.
[3] Hussin, *The Politics of Islamic Law: Local Elites, Colonial Authority, and the Making of the Muslim State*.
[4] Paolo Sartori and Ido Shahar, 'Legal Pluralism in Muslim-Majority Colonies: Mapping the Terrain', *Journal of the Economic and Social History of the Orient*, vol. 55, nos. 4–5 (2012), pp. 637–63.
[5] Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco*, p. 12; Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*.
[6] Buskens and Dupret, *The Invention of Islamic Law: A History of Western Studies of Islamic Normativity and Their Spread in the Orient*, p. 36.

For centuries, Muslims in Indonesia have had to negotiate Sharia with the pre-existing practices, customs[7] and local rulers. The present Indonesian *taklik talak* (conditional divorce) formula, [8] signed by a husband at the time of marriage and enclosed on the last page of a marriage certificate, is one outcome in the long historical development of Islamic law, in progress since the end of the sixteenth century.[9] In the pre-colonial period, under the Islamic kingdom of Mataram in seventeenth-century Java, this legal procedure was found in a slightly different context. The earliest form of this conditional divorce agreement was called *janji dalem* or *janjining ratu* (the royal promise).[10] The word '*dalem*' represented the relationship between the ruler and the groom. The *penghulu*, a religious official appointed by the ruler with an authority to regulate marriage and divorce, read out the promise and asked whether or not the groom acquiesced in the aforesaid. The groom only needed to answer 'yes' or 'no' and only rarely did the groom refuse.[11]

Since the end of the nineteenth century, Sharia pronouncements related to marriage and divorce were officially the domain of the *penghulu*. The *penghulu* was an official religious authority who performed the same function as the Islamic judicial authority (*qadi* or *kadi*) and was vested with the authority to handle not only religious but also diplomatic matters. On the highest (regency, *kabupaten*) level was *penghulu ageng* (great *penghulu*), who also presided over judicial sessions in the *surambi* (forecourt) of the mosque. On the sub-district (*kecamatan*) level, a *naib* (deputy) performed this religious function,

[7] C.A.O. van Nieuwenhuijze, 'The Legacy of Islam in Indonesia', *The Muslim World*, vol. 59, nos. 3–4 (1969), pp. 210–9.

[8] Scholars argued *taklik talak* was inspired by the sixteenth-century Shafi'ite book, *Tahrīr*, by Zakariyyā al-Ansārī (d. 926/1520) and subsequently elaborated by the Egyptian scholar al-Sharqāwī (1737-1812) in his book *Ḥāshiya al-Sharqāwī*. See Azyumardi Azra, 'The Indonesian Marriage Law of 1974: An Institutionalization of the Shari'a for Social Changes', in *Shari'a and politics in modern Indonesia*, ed. by Arskal Salim and Azyumardi Azra (Singapore: Institute for Southeast Asian Studies, 2003), pp. 76–95.

[9] Cammack, Donovan, and Heaton, 'Islamic Divorce Law and Practice in Indonesia'.

[10] Hisako Nakamura, *Conditional Divorce in Java* (Harvard: Islamic Legal Studies Program Harvard Law School, 2006).

[11] Different regional versions of *janji dalem* can be found in A.H. van Ophuijsen, *De Huwelijksordonnantie en Hare Uitvoering* (Leiden: Firma P.W.M. Trap, 1907).

while on the lowest (village) level it was the duty of the *modin* or *kaum* or *amil*. The substantive laws applied in court were derived from a number of prominent Shafi'i *fiqh* treatises. This *penghulu* institution exemplifies the close relationship between Islam and Javanese custom.[12] In view of the long-established political and religious power of the *penghulu*, in 1835 the *penghulu*'s jurisdiction in family law reinforced by a legal mechanism to enforce the *penghulu*'s decision was formally recognized.[13] Later, in the 1880s, the office was absorbed into the Dutch colonial administration, irrespective of unexpected stereotypes and dilemmas.[14]

It was decided that the principle of 'to each his own law'[15] should prevail. This means Muslims were subject exclusively to Islamic personal status, with the exception of law cases concerning maintenance (*nafkah*) and the division of property upon divorce and inheritance. Europeans were governed by Dutch law, while *adat* law was for those considered Natives. The Natives were fragmented into various groups with various requirements. Christians requested assimilation into Dutch law, the local aristocracies and elites claimed a privileged procedure and the legal classification of non-Natives and non-Europeans was indistinct.[16] The *adat* and Islamic judicial systems remained under the control of the colonial regulation, although they enjoyed judicial autonomy.

[12] R. Abdoelkadir Widjojoatmojo, 'Islam in the Netherlands East-Indies', *The Far Eastern Quarterly*, vol. 2, no. 1 (1942), pp. 48–57.
[13] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 34.
[14] *Penghulu* were challenged by three competing situations. Holding two identities, as devout Muslims and state *qadi*, they were bound (1) by the religious obligation to ensure the proper application of the Sharia; (2) with administrative matters as they worked under the colonial government; and (3) with a set of moral standards derived from their status as social leaders. Muslim organizations in the early-twentieth century stereotyped the *penghulu* as colonial-sponsored civil servants with less than adequate of the knowledge of Islam. Muhamad Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942* (Jakarta: INIS, 2001).
[15] Daniel S. Lev, 'Colonial Law and the Genesis of the Indonesian State', *Indonesia*, vol. 40, no. October (1985), p. 61.
[16] *Ibid.*, p. 62.

The demands for the institutionalization of Islam assumed increasingly important proportions in the late colonial administration. In 1937, the colonial state acquiesced in such demands by the establishment of the *Penghulu* Court with the jurisdiction to settle marital disputes, but its competence still did not extend to inheritance and endowment. Some years earlier, with the publication of *Staatsblad* 1929 No. 348, the Dutch introduced the appointment of marriage registrars to reinforce marriage registration as a legal obligation for Muslims in Java and Madura. This was actually the second attempt by the Dutch colonial government to control Muslim marriage affairs. The first ordinance on the same matter came into force in 1896 in the form of *Staatsblad* 1895 No. 198. This ordinance stipulated the general guidelines of marriage registration and emphasized that only those registrars appointed by the Dutch had to authority to register a marriage, a divorce and the reconciliation of a marriage. The registrars were permitted to receive an administrative fee from their clients.[17] In practice, these laws were pretty ineffectual.

The establishment of the Ministry of Religious Affairs in 1946, a few months after the proclamation of independence in Indonesia, was a significant event for Muslim groups. Its existence inevitably produced the appeal for a unitary organization to administer Islamic affairs.[18] Non-Muslim Nationalists opposed this initiative. Hence, Lev has remarked that "the very existence of a Ministry of Religious Affairs seemed to justify and lend permanence to a state that was patently not Islamic in form and substance".[19] Although it was conceived as a body which would take care of the interests of all religious groups, the Ministry was largely staffed by Muslims.[20] It offered wide employment opportunities to members of Muslim organizations, the majority of

[17] Stijn van Huis and Theresia Dyah Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', *Australian Journal of Asian Law*, vol. 13, no. 1 (2012), p. 7.
[18] Deliar Noer, *Administrasi Islam di Indonesia* (Jakarta: Rajawali, 1983).
[19] Daniel S. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions* (Berkeley: University of California Press, 1972), p. 47.
[20] Nieuwenhuijze, 'The Legacy of Islam in Indonesia', p. 212.

whom came from religiously devout and non-privileged groups.[21] In legal practice, the Ministry does play a role in mediating the lacunae between national law and Islamic law.[22] Moreover, despite its clinging to the Islamic tradition affiliated with the Shafi'ite *madhhab*, the Ministry has initiated small reforms acceptable to the majority of Muslim organizations.[23] The best example of this could be seen when the administration of Muslim private affairs, particularly in Java and Madura, was accorded government priority and placed under the administrative jurisdiction of the Ministry. The government even applied a legal sanction to people who performed a marriage ceremony without a state official in attendance.[24]

As a consequence, in recognition of the plurality of legal orders, Law 22/1946 on the registration of marriage, divorce, and reconciliation (*nikah*, *talak*, *dan rujuk*) was passed as the first government regulation after Indonesian Independence. The application of the law was restrictedly to Muslims in Java and Madura, but was later supplemented by Law 32/1954 extending it to all Muslims throughout the nation. The law was an important step for the Ministry to take, as under its aegis it unified the registration of Muslim marriage and divorce. By backing this law and insisting on official registration, the purpose of the Ministry was to assure the legal certainty and stability of Muslim marriages.[25]

Since 1946, the task of registration has been delegated to what is now the Kantor Urusan Agama (KUA, the Office of Religious Affairs) a body established on sub-district level. After its inception, the district administrations (*regentschappen*) were no longer responsible for

[21] Cammack, Bedner, and van Huis, 'Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia', p. 5.
[22] Otto, 'Sharia and national law in Indonesia', p. 444.
[23] Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, pp. 50–3.
[24] See Article 3 of Law No. 22/1946 on the registration of Muslim marriage, divorce and reconciliation.
[25] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 51.

appointing registrars and managing the administration fees.[26] During the 1950s, attempts were also made to reform substantive marriage law. Bowing to the pressure exerted by Indonesian female activists, in the 1960s, the courts made important strides in strengthening the position of women in the family. In 1968, the Supreme Court handed down a judgement which gave Indonesians the right to divorce on the grounds of irreconcilable incompatibility. These grounds had formerly only been applicable in the law on Christian marriages.

An intense debate about the unification or the diversity of substantive marriage laws continued to rage in the early years of the New Order administration. One group demanded one law for all different religious groups, while its opponents insisted on different laws which would be consistent with the requirements of the different religious groups. Religious political parties endorsed the latter.[27] Convincing all the conflicting groups to reach a consensus seemed a virtually impossible task. Consequently, despite the myriad proposals for marriage law reform up to 1973, none of them actually reached the statute books.[28] It was only with the full support from the Soeharto government was it possible to introduce a bill before the House of Representative on 31 July 1973. Among the fundamental issues which the government sought to control through unified legislation on marriage was population growth.[29] Cammack argues that the draft of the marriage law gave the Islamic courts an advantage. Firstly, these courts were now given firmer control over the administration of marriage and divorce. Secondly, the draft included provisions regulating substantive areas not previously stipulated as being under

[26] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', p. 9.
[27] Soewondo, 'The Indonesian Marriage Law and its Implementing Regulation'.
[28] Katz and Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems'.
[29] Adriaan W. Bedner and Stijn van Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', *Utrecht Law Review*, vol. 6, no. 2 (2010), p. 178.

the jurisdiction of Islamic courts. These areas include marital property, spousal support and child custody.[30]

June Katz and Ronald Katz have stated that it was not clear who had drafted the bill before the President endorsed it.[31] However, as O'Shaughnessy has argued, although President Soeharto certainly did instruct the Ministry of Justice to draft the bill on the basis of the state philosophy (*Pancasila*),[32] from the outset the Ministry of Religious Affairs was excluded from participation in preparing the draft bill.[33] Furthermore, it is fair to say that unquestionably Muslim leaders felt disappointed they had been sidelined from the process. This is probably the reason that some of the Articles proposed in the Bill were perceived to be in contravention of Islamic doctrine, a clash which elicited formidable opposition from Islamic parties and younger Muslims.[34] Their strongly-worded criticism made the government aware that it would have to make some delicate compromises.[35] The upshot was that the eventual new Marriage Law ushered in some essential changes which helped to maintain political stability and to set in train social reform in Indonesia.[36]

The law was passed in 1974 and came into force a year later. By its accommodation of the ideas of reformist Muslims, the new Marriage Law strengthened state authority to regulate and control family affairs. In a nutshell, the state had staked its claim to place its officials in a vital position as guardians of socio-religious changes, obstructing

[30] Mark Cammack, 'Islamic Law in Indonesia's New Order', *International and Comparative Law Quarterly*, vol. 38, no. 1 (1989), p. 58.
[31] Katz and Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems', p. 660.
[32] O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*, p. 30.
[33] Katz and Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems', p. 659.
[34] Soewondo, 'The Indonesian Marriage Law and its Implementing Regulation', p. 285.
[35] Katz and Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems'.
[36] Katz and Katz, 'Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited'.

the possibility of resorting to existing non-state agencies.[37] This also means that substantive issues relating to marriage are addressed by the state in the language of unified state law[38] obviating the problems of the entrenched pluralities in the legal system, religious affiliations, and local ethnic attachments.[39] The law covers a wide range of matters arising from the dissolution of marriage. One important step was the abolition of the husband's right to unilateral repudiation (*talak*) and the provision that divorce had to be subject to court review, and granting both husband and wife an equal right to petition for a divorce. In spite of these changes, Muslims were fairly satisfied with the degree of the influence of Islamic law in the law.

Nobody would deny the fact that the government's marriage legislation has led to a dramatic shift in perceptions and patterns of marriage.[40] The Marriage Law defines a marriage contract as a religious ceremony, not a civil marriage. Article 2 decrees that a marriage can only be valid if it has been performed religiously. Conformity with religious prescription is, therefore, a must and unavoidable. However, in addition to religious solemnization, marriage also needs to be authorized by the state through registration.[41] Instead registration being integrated into the legal conditions of a marriage, it is a legal complement to it. Non-compliance with state administration renders a marriage null and void both civilly or officially and, consequently, married couples are not entitled to apply for or be issued with a marriage certificate. Nevertheless, failure to register a marriage does not influence its validity in religious terms.

[37] Katz and Katz, 'The New Indonesian Marriage Law: A Mirror of Indonesia's Political, Cultural, and Legal Systems'; Ratno Lukito, 'Sacred and Secular Laws: A Study of Conflict and Resolution in Indonesia' (PhD Dissertation. McGill University, 2006), pp. 244–5.
[38] M.B. Hooker, 'State and Syarî'ah in Indonesia, 1945 – 1995', in *Indonesia: Law and Society*, ed. by Timothy Lindsey (Sydney: Federation Press, 1999), pp. 97–110.
[39] Cammack, 'Islamic Law in Indonesia's New Order', p. 61.
[40] O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*; Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth'.
[41] Soewondo, 'The Indonesian Marriage Law and its Implementing Regulation'.

In other words, the Marriage Law conceptualizes marriage at the intersection of religious precepts and state administration.[42]

Although an unregistered marriage is considered not legally binding (*tidak memiliki kekuatan hukum tetap*), it is not necessarily void. State officials and religious leaders frequently express this in a set formula 'a marriage is religiously valid, but not legally'. This phrase suggests that religious validation takes priority over state legalization. In other words, it is religious law that determines the validity of a marriage, not the registration. Bowen regards this as 'dual validity'.[43] This ambiguity means that, as far as the marriage contract is concerned, both religious and legal debates have frequently been framed as an arena in which religious validity and legal validity are seen as being in opposition.[44] On the one hand, the state demands that its own norms be used to determine the legality of a religiously civil contract. On the other hand, the *fiqh* doctrine offers the consideration that, should there be no validation by a religious contract, sexual relationships beyond some romance and superficial intimacy fall into the category *haram* (unlawful). Nevertheless, what was clarified was that, under the terms of the marriage law, the state is able to secure its interest in regulating marriage and controlling the family.[45]

Politically, the passing of this law has influenced the subsequent direction of the relationship between Islam and the state. It is noticeable that the earlier attempts to impose a secular, unified marriage law to be enforced in a general court failed. Therefore, instead of curtailing Islamic law and courts, the government decided to support Muslims in their desire to manage their own family affairs.[46] Nonetheless, from the mid-1980s, there was an apparently radical shift in the New Order government policy towards Islam on various

[42] Cammack, Young, and Heaton, 'Legislating Social Change in an Islamic Aociety: Indonesia's Marriage Law'; Katz and Katz, 'Legislating Social Change in a Developing Country: The New Indonesian Marriage Law Revisited'.
[43] Bowen, *Shari`a, State, and Social Norms in France and Indonesia*, p. 10.
[44] Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce', p. 22.
[45] O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*.
[46] Cammack, 'Islam, Nationalism and the State in Suharto's Indonesia'.

issues.[47] This changing attitude crystallized in the enactment of Law No. 7/1989 on Islamic Courts and now serves as the legal basis for the independence of Islamic courts.[48] The law places the religious courts on the same footing as the other courts. In the context of its substance, the law is also perceived to have made significant progress in the application of Islamic law.

With the significant backing they were given by the central government, the confidence of Muslim elites to submit other proposals for legal reform increased. The Ministry of Religious Affairs applied for the drafting of a family law code which would specifically regulate Islamic courts. This idea was first voiced by Bustanul Arifin, the chairman of the Special Chamber of Islamic Law of the Supreme Court, in 1985. Armed with the approval of Muslim judges and the officials of Islamic courts, the government agreed to work on this compilation of Islamic jurisprudence, officially called the Kompilasi Hukum Islam.[49] The proposal was approved by President Soeharto in 1991.[50] Covering the laws relating to marriage, inheritance and endowment, this compilation enjoins all relevant state institutions to refer to it in the resolution of the issues it covers.

The promulgation of the KHI was definitely the outcome of a long process of conversations and negotiations between the representatives of Islam and the state. It would seem that the New Order government reasoned taking a more accommodating approach

[47] R. William Liddle, 'The Islamic Turn in Indonesia: A Political Explanation', *Journal of Asian Studies*, vol. 55, no. 3 (1996), pp. 613–34.

[48] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 57.

[49] Abdurrahman, *Kompilasi Hukum Islam di Indonesia* (Jakarta: Akademika Pressindo, 1992); Cik Hasan Bisri (ed.), *Kompilasi Hukum Islam dan Peradilan Agama dalam Sistem Hukum Nasional* (Jakarta: Logos, 1999).

[50] Generally speaking, there are two main steps in undertaking this legal formation: collecting relevant data and legal drafting. The data were collected not only by researching literature, but also in the field in which the team divided the research activities into a number of stages: studying thirty-eight *fiqh* texts of inter-*madhhab*, predominantly the Shafi'ite school, covering issues of family law, the *fatwa*s of various Islamic organizations in Indonesia. Furthermore, with the assistance of a number of scholars from some State Institutes of Islamic Studies (IAIN, Institut Agama Islam Negeri*)*, the team interviewed hundreds of *ulama* from ten areas in which an Appeals Court had been established. The team also made a comparative study of the Islamic family laws which had been applied in other Muslim countries.

to reforming marriage could be an instrument to reduce resistance from Islamic circles in the future.[51] Nurlaelawati remarked that Soeharto's personal desire to secure political support from Muslim circles featured among the most important arguments.[52] In all the stages of the drafting of the KHI, the interaction between the perspective of Indonesian *ulama* on Islamic jurisprudence and the political will of the state was obvious. The result of this interaction can be considered the extent of the political intervention of the state in Islamic jurisprudence in Indonesia as from a political point of view, the KHI is substantive Islamic jurisprudence which has been legitimated by the state.[53] Another implication is that the authorization of the KHI is that the state has publicly demonstrated not only its cordial relationship with Islam but also its support the process of Islamization in its political domain.

Examining the substance of the KHI, quite clearly some provisions sustain the legal norms of the Marriage Law but others have required the invention of a new legal norm. Interestingly, the accommodation of *adat* is also apparent in several provisions. Of particular interest is the heir's rights to inherit grandparent's property in the case of an orphaned grandchild whose parents have predeceased his/her parents and its solution of the issue of joint property (*harta bersama*, *gono gini*), which decrees that both a husband and a wife have rights to marital property when their marriage ends. Despite such nods to state and *adat* law, the KHI has indubitably defined marriage in the light of classical *fiqh* doctrine, that is, as a solemn agreement which serves as a manifestation of obedience to God's commands and thereby qualifies as an act of worship (see Article 2).

The KHI makes a reference to and reinforces Article 2 of the Marriage Law which states that a marriage must be registered as a guarantee of social and legal order (Articles 5 and 6). This means that

[51] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 180.
[52] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 91.
[53] *Ibid.*, p. 89.

the KHI also preserves dual validity, in the sense that the absence of marriage registration does not affect its religious validity. In fact, the KHI goes a step further offers a new form of unregistered marriage (*nikah sirri*). As long as it has been concluded in conformity with Islamic doctrines, an unregistered marriage can be legalized retrospectively by the marriage registrar upon receipt of an authorization from the Islamic court. Through *isbat nikah* (Article 7 Point 2), this procedure is a state compromise on *nikah sirri*. *Isbat nikah* gives the couples in a *nikah sirri*, and their children, an opportunity to claim important identity documents which will allow them access to state programmes and formal education.[54]

Sumner and Lindsey have reported that more than 13,000 marriages were filed for *isbat nikah* in Islamic courts in 2009.[55] In 2012, this number rose to 31,927 cases (7.8%). Of course, we cannot make a judgement about whether or not this number is high, because we need to compare it with the never proven exact figures of unregistered marriages. My materials from a regional Islamic court in East Java show that the number of *isbat nikah* case is extremely low (0-6 cases per year), whereas my observations in some villages in Pasuruan Regency found a quite significant number of marital couples (around 20%) who are not in possession of a marriage certificate. For this reason, towards the end 2016, the Female Civil Servants' Association of Pasuruan arranged a programme of *isbat nikah massal* (mass marriage legitimation). Public participation in the programme held in partnership with the sub-district Muslim marriage registration offices and *modin* was noteworthy. The Bangil Islamic Court legalized approximately 100 unregistered marriages. This approach seems to have been implemented in other regencies during the last few years, as well as in the capital city, Jakarta.[56]

[54] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism'.
[55] Cate Sumner and Tim Lindsey, *Courting Reform: Indonesia's Islamic Courts and Justice for the Poor* (New South Wales: Lowy Institute for International Policy, 2010).
[56] '557 Pasangan Sudah Mendaftar di Acara Nikah Massal dan Isbat Nikah di Malam Tahun Baru', *Tribunnews*, http://www.tribunnews.com/metropolitan/2018/12/31/557-pasangan-

Furthermore, legal historians have taught us that the rules governing familial matters in Indonesia have existed since the pre-colonial period, both before and after the introduction of Islam. Since the advent of Islam to the present day, the *penghulu* have been an important actor in the implementation of these rules. Obviously aware of its value, the colonial government officially incorporated this *penghulu* system into its colonial administration at the end of the nineteenth century. In the early years of Independence, the new state maintained the plurality of legal orders for quite a long period. The winds of change began to blow when the debate about the unification of substantive marriage laws escalated under the New Order. Despite the problems arising from the legal problem of what constitutes a valid marriage, the 1974 Marriage Law proved that unification could be achieved.

The Marriage Law introduced a number of progressive changes, such as the abolition of the husband's right to unilateral repudiation (*talak*) and decreeing that divorce must be subject to a court review. For Muslims in particular, the issue of marriage is centred on the nature of the marriage contract which, under the Marriage Law is recognized as a religious ceremony but not a civil marriage. Therefore, some believe that religious validation takes priority over state legitimation. Even after its enactment, there were still marriages concluded purely on the basis of religious laws and not registered civilly. The issuance of the KHI in 1991 cleared up this discrepancy by introducing the qualification of *isbat nikah*. It is a judicial mechanism which allows people to legalize their unregistered marriages retroactively.

3. Sharia-based Regulations and the Steep Stairway to Legislation

The political transition in 1998, the *Reformasi*, has led to an increasing challenge to the state from conservative Islamic groups which have

sudah-mendaftar-di-acara-nikah-massal-dan-isbat-nikah-di-malam-tahun-baru, accessed 4 Mar 2019.

made Islam increasingly more publicly visible and articulate. Despite the agreed principle of a "state based on the rule-of-law" (*negara hukum*, *rechtsstaat*),[57] the question of whether Indonesia is secular or religious recurs at regular intervals. In the present climate, Islam has increasingly become the most important frame of reference which many Muslims in Indonesia imagine has the competence to bring about justice.[58] It has penetrated to the centre and become a source of identity politics. The rise of 'new Islamic populism'[59] has influenced the relationship between state sovereignty and Islam. This shift has been strengthened by the transnational idea of the *umma* (imagined global Islamic community) which has led to a dramatic alteration in local understandings of what it means to be a true Muslim.[60] This section elucidates how the rise of Islam as a collective identity in the post-Soeharto period has influenced the regulations on marriage on both national and sub-national levels.

Within the new framework of democratization and regional autonomy, the rise of Islam as a collective identity has become concretely apparent in the introduction of Islam-based regulations on the sub-national level. These regulations are claimed to encourage the growth of a better Islamic society. Nonetheless, they do impose additional conditions on those who wish to enter into a marriage. Since 2001, numerous regions like Solok, Payakumbuh (West Sumatra), Bulukumba (South Sulawesi), Kota Banjarmasin (South Kalimantan), have issued a local regulation on the obligation to read the Qur'an. The long and short of this requirement is that students and brides and grooms must be able to read the Qur'an. In Bulukumba, for instance, the proposal that this regulation be adopted was surprisingly voiced by a religious leader who was the incumbent head of the District Office

[57] Daniel S. Lev, 'Judicial Authority and the Struggle for an Indonesian Rechtsstaat', *Law & Society Review*, vol. 13, no. 1 (1978), pp. 43–4.
[58] Noorhaidi Hasan, 'The Making of Public Islam: Piety, agency, and Commodification on the Landscape of the Indonesian Public Sphere', *Contemporary Islam*, vol. 3, no. 3 (2009), pp. 229–50.
[59] Vedi R. Hadiz, 'A New Islamic Populism and the Contradictions of Development', *Journal of Contemporary Asia*, vol. 44, no. 1 (2013).
[60] Delmus Puneri Salim, *The Transnational and the Local in the Politics of Islam: The Case of West Sumatra, Indonesia* (Cham: Springer International Publishing, 2015).

of Religious Affairs.[61] The certified ability to read the Qur'an as a new condition for the conclusion of an official marriage was indeed a new interpretation of certain aspects of Sharia. Extending beyond being a sign of religious piety, it has demonstrated the ongoing complicated social and political negotiations.[62] Buehler argues that the implementation of Sharia-based regulations is a by-product of the simmering conflict over control of resources between state elites and local economic elites.[63]

Be that as it may, it is important to note that the post-New Order legal reform has also fuelled debates and conversations between Muslim groups. A legal draft called the Counter Legal Draft Kompilasi Hukum Islam (CLD KHI), which was proposed by a working group consisting of young Muslims in 2004, signalled a progressive shift. It was meant to complement the government's efforts to raise the status of KHI to that of a law. The draft was controversial, drawing harsh reactions from conservative Muslim groups. One of the many controversies in the CLD KHI was its conception of Islamic marriage as a purely a civil contract, not a religious agreement.[64] Subsequently, it was proposed that marriage registration would be a compulsory condition and its omission would affect the validity of a marriage. Another interesting interaction was that between the 'liberals' and the 'conservatives' in their discussions about such issues as interreligious marriage.[65] Their conversations suggest that contestation of religious authority is still a work-in-progress.

[61] Elsam, *Monitoring Perda Syariat Islam di Bulukumba: Perda Nomor 06 tahun 2003 tentang Pandai Baca Tulis Al-Qur'an bagi Siswa dan Calon Pengantin* (Jakarta, 2008).

[62] Michael Buehler, 'The Rise of Shari'a by-Laws in Indonesian Districts: An Indication for Changing Patterns of Power Accumulation and Political Corruption', *South East Asia Research*, vol. 16, no. 2 (2008), pp. 255–85.

[63] Michael Buehler, 'Elite Competition and Changing State–Society Relations: Shari'a Policymaking in Indonesia', in *Beyond oligarchy: Wealth, power, and contemporary Indonesian politics*, ed. by Michele Ford and Thomas B. Pepinsky (Ithaca, New York: Cornell Southeast Asia Program Publications, 2014), p. 174.

[64] Muhammad Latif Fauzi, 'Islamic Law in Indonesia: Recent Debates on Islamic Family Law in the Reformasi Era (1998-2007)' (Leiden University, 2008).

[65] R. Michael Feener, *Muslim Legal Thought in Modern Indonesia* (Cambridge: Cambridge University Press, 2007).

In 2010, the government proposed the Bill on the Material Law on Marriage in Islamic Courts (*Rancangan Undang-undang Hukum Materiil Pengadilan Agama Bidang Perkawinan,* RUU HMPA). It was claimed that this law, to be applied exclusively in the Islamic courts, would replace the two-decade-old KHI and its legal status would be raised from a Presidential Instruction to a statutory law. It was argued that it would end the controversies about the legal position of the Bill in relation to the 1974 Marriage Law. Generally speaking, for the most part, the RUU HMPA sustained the norms already stipulated in the KHI, but put forward new rulings (Articles 143-153) pertaining to unregistered marriage, temporary marriage, polygyny, out-of-court divorce, and some other unresolved issues. These issues were all still considered to be unlawful. In its definitions, the law used two terms, a misdemeanour (*pelanggaran*) and a crime (*kejahatan*), to categorize them. The former is sanctioned by either a fine or imprisonment, while the latter carries a sentence of a long prison term.

More details of the two categories are found in the following table:

Misdemeanours	Crimes
A marriage not concluded in the presence of a marriage registrar (Article 143)	Entering into a temporary marriage (*mut'ah*) (Article 144)
A marriage to a second, third, or fourth wife without the official permission of a (Islamic) court (Article 145)	Conducting an extramarital relationship with an unmarried woman which has led to a pregnancy and refusal to marry her (Article 147)
A husband's unilateral repudiation out of court (Article 146)	Performing a marriage and acting as an official marriage registrar and/or magistrate guardian without due authorization (Article 149)
A marriage registrar who infringes on his obligations (Article 148)	Acting intentionally as a marriage guardian, even though not legally entitled to do so (Article 150)

Table 1.1. Categories of Misdemeanours and Crimes in the RUU HMPA

Some argued the criminalization approach was taking the easy way out (*langkah malas*) by the legal draftsman. It was a repetition of the content of previous marriage laws. The 1946 Law on Marriage introduced the concept of financial penalties for women who enter into an illegal marriage and imprisonment for those marry them off illegally. Furthermore, Government Regulation No. 9/1975 stipulates that failure to register a marriage is punishable by a Rp7,500 fine. Likewise, Law 23/2006 on Civil Administration introduced a civil penalty, a maximum of Rp 1,000,000, for those who fail to report their marriage within sixty days of its conclusion. Despite these legal penalties, there is still a fundamental problem that no very strict legal implementation of the law has ever been attempted.[66]

This section reviews the legal reforms in the post-*Reformasi* era and the drafting of a number of sub-national laws which support religious-based ideas but have not been recognized in national law. In this period, conservative Muslim groups emerged as the public face of Islam and under these circumstances, these sub-national laws could be interpreted as a real threat to attempts to reform family law which have displayed a tendency to secularize legislation. Attempts to introduce such legal reform were made in 2010. However, there were some major stumbling-blocks which stood in the way of the government passing it, specifically in the form of the imposition of financial penalties for actions which are permissible under Sharia law. The draft law was rejected by the general public.

4. Contesting *Maṣlaḥa*

The legal reform of Islamic Family Law has always been an arena in which the voices of the *ulama* are distinctly audible. They have applied *ijtihād* to ensure that their involvement was, and still is, visible in the provision of both the material for and the religious legitimacy of a legal

[66] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws'.

code. Although there is a growing tendency to promote the notion of the common good (*maṣlaḥa*),[67] the result of *ijtihād* is not always supportive of, indeed can even be in opposition to, the state way of thinking. By exerting their influence on Islamic legal matters, particular Muslim groups wish to make their position in the relationship between Islam and state authority explicit.

Analysing the proposed bill, this section investigates three *fatwas* (non-binding Islamic legal opinions) on marriage registration in an attempt to understand the diverse opinions among Islamic authorities. These *fatwas* were issued by major Islamic organizations, namely the Majelis Ulama Indonesia (MUI, the Indonesian ulama council), the Muhammadiyah and the NU. My selection of these organizations as a case study is premised on the variations in terms of their relationship with the state, the constituents, and their methods of legal reasoning. Each of them has a special body of *iftā'* (producing *fatwas*), respectively the *Komisi Fatwa* of the MUI, *Majelis Tarjih* of Muhammadiyah, and *Bahtsul Masail* of NU.

4.1. The MUI *Fatwa*

The MUI was established by the government in 1975 as a forum which would encompass the diversity of Islamic organizations, Muslim leaders and scholars. It has remained important in the sense that it has to maintain the balance by accommodating the interests of the political regime and the Muslim communities.[68] Its *fatwas* are supposed to be 'intermediary'. It was in the *Ijtima' Ulama* (Ulama Assembly) held in the Pesantren of Gontor, East Java in May 2006, that the issue of unregistered marriage was discussed. Two years later, the legal conclusion was publicly announced with the issuance *of Fatwa* No. 10/2008. In order to avoid ambiguities, the MUI was very careful in selecting its term by which to designate an unregistered marriage. Despite the familiarity of the term *nikah sirri*, the *fatwa* introduced the

[67] Felicitas Opwis, 'Maṣlaḥa in Contemporary Islamic Legal Theory', *Islamic Law and Society*, vol. 12, no. 2 (2005), pp. 182–223; Hefner, 'Sharia Law and Muslim Ethical Imaginaries in Modern Indonesia'.

[68] Syafiq Hasyim, 'Majelis Ulama Indonesia and Pluralism in Indonesia', *Philosophy & Social Criticism*, vol. 41, nos. 4–5 (2015), pp. 487–95.

notion of *nikah di bawah tangan* (unofficial marriage). The MUI argues that, in everyday practice, *nikah sirri* is sometimes interpreted in irregular terms. Instead of indicating a marriage which is just not registered, *nikah sirri* can mean a marriage which has deliberately been concluded in secret, without the presence of witnesses (*shahīd*). This kind of marriage is, according to the MUI, qualified as invalid (*tidak sah*). It cites that, in the classical *fiqh* treatises, the majority of Sunni schools are in agreement that the presence of witnesses is as a requisite for the legality of marriage. Only the Maliki School say that the publication (*i'lān*) is sufficient, as a substitute for a witness.

Although the *fatwa* did confirm the legal norm stipulated in the state law, it embraced 'dual validity' in a different sense. It states that an unofficial marriage is (religiously) valid (*sah*), in regard to its compliance with the conditions (*syarat*, *rukun*) laid down in Islam, but shall fall into the category of *haram* (unlawful) if it causes *mudharat* (harm). The *fatwa* interpreted harm as matters related to the husband's obligation to fulfil the rights of wives and children. Despite this stipulation, the MUI did not openly declare any unofficial marriages either harmful or immoral. Discussing the status of *haram*, Ma'ruf Amin, the General Chairman of the MUI at the time, indicated that, if a husband neglects his responsibilities, he will (only) be regarded as sinful. In its legal reasoning, the *fatwa* adopted the method of *sadd al-dharī'a* (blocking the means to unexpected evil). Consequently it infers that marriage registration is strongly recommended so as to protect Muslims from harm. The *fatwa* also refers to a statement by the nineteenth-century Javanese *ulama*, Nawawi al-Bantani, saying that, "if a ruler issues an obligatory command (*wājib*), it must be taken to be absolutely compulsory (*ta'akkada wujūbuhū*); if he gives a recommendation (*mustaḥabb*), it must be taken as compulsory; if he gives a permission (*jā'iz*), as long as it involves the common good (*maṣlaḥa*), it must be perceived it as compulsory." According to the MUI *fatwa*, marriage registration is covered by the first category which is absolutely obligatory.

4.2. The *Majelis Tarjih Fatwa*

The second *fatwa* was handed down by the *Majelis Tarjih* of the Muhammadiyah, well known as a modernist movement which, under the banner of reform (*tajdīd*) and purification, approaches the basic sources of Islam by means of independent rational investigation. In addition to the principle of "the return to the Qur'an and Sunnah of the Prophet" as advocated by the Egyptian scholar Muhammad 'Abduh, the use of reasoning is encouraged. In the context of Sharia law, this orientation is epitomized by the approach called *tarjīḥ*, which is an examination of the opinions of various Muslim jurists in order to determine which is most apposite to the original Sharia source.[69] Like the MUI, in 2007 the *Majelis Tarjih* of the Muhammadiyah issued a *fatwa* on *nikah sirri* which reinforced the state's legal norm on official marriage. Interestingly, this *fatwa* did not contain a clear-cut statement on the legal status of *nikah sirri*. Instead, it states that the function of marriage registration is a preventive measure to eliminate possible deviations from the required conditions in a marriage contract and to avoid the forgery of the identity and documents of the bride. Marriage registration is pronounced compulsory, on the basis of the analogy (*qiyās*) of the obligation of the administration of debts (*mudāyana*). A marriage contract is said to occupy a more prominent position, *mīthāqan ghalīẓan* (solid agreement), than other contracts. The *fatwa*s of the MUI and Muhammadiyah are both good examples of the use of the *maṣlaḥa* approach to deal with modern developments.

4.3. The *Bahtsul Masail Fatwa*

This brings us to the third *fatwa* issued by the NU. It is important to note that the NU is an Islamic organization which promotes a traditionalist view of Islam. Traditional religious leaders (*kyai*) are vested with the authority to undertake legal reasoning. Its adherence to classical traditions is evident in its references to the four Sunni classical schools of Islamic jurisprudence, most importantly the Shafi'i. In the field of legal issues, the NU's *Bahtsul Masail* upholds the text-

[69] Syamsul Anwar, 'Fatwā, Purification and Dynamization: A Study of Tarjīh in Muhammadiyah', *Islamic Law and Society*, vol. 12, no. 1 (2005), pp. 27–44.

based reference (*madzhab qauli*) to legitimate books (*kutub mu'tabara*) and draw an analogy (*ilḥāq*) from existing cases in the books (precedents). Later it also added precedents set by pious ancestors (*madzhab manhaji*).[70] This method affects the way in which contemporary issues are understood. Following the widespread introduction of the Bill on Islamic Marriage, the Pesantren Deliberation Forums from throughout Java and Madura (*Forum Musyawarah Pondok Pesantren se Jawa dan Madura*) held a *Bahtsul Masail* meeting in Pesantren Lirboyo, East Java, in mid-2010. *Nikah sirri* and unofficial polygyny were the subjects of the most heated debates. The question raised in the forum was: "Is it justifiable to consider these crimes?"

The *fatwa* cites the opinion of the distinguished contemporary Syrian scholar, Wahbah az-Zuḥailī (1931-2015), recorded in his seminal work, *al-Fiqh al-Islāmī wa Adillatuh*. This opinion comes up in the discussion of polygyny, under the heading "requests for judge's permission (*idhn al-qāḍī*)". Az-Zuḥailī remarks that polygyny is subject to the permission of judges. The judge plays a significant role in authenticating whether or not a man who wishes to enter into a polygynous marriage has fulfilled the legal requirements, namely: justice between wives and the ability to provide equality of maintenance. This is a necessary step because, as Az-Zuḥailī argues, people are prone to make mistakes in their notions of concession (*rukhsah*).[71] In a nutshell, Az-Zuḥailī urges the importance of the court's permission.

Significantly the *fatwa* does not seem to emphasize the core point Az-Zuḥailī made. Instead, it seems more concerned about another matter, that is, Az-Zuḥailī's point about the judge's exaggerated control (*ishrāf*) over a personal relationship. Az-Zuḥailī notes:

> "The exaggerated control of the judge over personal status is futile. He might not be aware of the real reason, as people usually hide

[70] Ahmad Zahro, *Tradisi Intelektual NU: Lajnah Bahtsul Masa'il, 1926-1999* (Yogyakarta: LKiS, 2004).
[71] Wahbah Az-Zuḥailī, *al-Fiqh al-Islāmī wa Adillatuh*, vol. 7 edition (Beirut: Dār al-fikr, 1985), p. 172.

> this reason. Knowledge of the facts is supposed to expose the secrets of marital life and intervention in the personal freedom of people and a curb on the will of a human being. Marriage is a purely personal matter, which is agreed between the man and the guardian of the woman. No one can change his intention and stand in the way of his values. The secrets of a household are known only to the couple."

Relying on this premise, the *fatwa* perceives the personal affairs of a family to be an aspect which should be respected without any further intervention by a judge. Viewed in the context of the criminal provisions in the bill, it seems obvious that the *fatwa* pronounces an analogy (*ilḥāq*) between the administration of a legal sanction to punish an unregistered marriage and exaggerated control of marital life. Here, the *fatwa* interprets *maṣlaḥa* in a different manner, namely: the privacy of a married couple. Consequently, the *Bahtsul Masail* concluded that legal (criminal) sanctions exacted on those who enter into a *nikah sirri* or unofficial polygyny violate Sharia.

5. A New Trend: Citizens' Rights Approach

The previous section contains a brief overview of the diverse orientations in Muslim groups towards the legal reform of family law. From a religious perspective, unregistered marriage remains a debatable topic, even though years before the government did attempt to find some ways to deal with this issue by passing the Law on Civil Registration. The law introduced harsh legal sanctions for those who do not report their marriage to the authorized institution. It seems, however, that the problem does not lie in the absence of a strict legal norm, but in its implementation.[72] Despite every effort, the controversies about what makes a proper marriage have not been resolved by different laws. They have continued to surface in local administrative practice and court decisions.[73] The debate about

[72] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', p. 15.
[73] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 182.

Muslim marriage has likewise shifted from a contention over what is an appropriate norm to be applied to Muslims to a debate about civil rights, primarily children's rights to legal identity.

Judges have played a stalwart role in the state's attempts to protect children's rights which derive from the issue of the legal validity of their parents' marriage. Retrospective marriage legalization by recourse to the *isbat nikah* mechanism enshrined in the KHI has proved to be inadequate to accommodate the needs of any child who are born out of legal wedlock in the current legal framework. This issue came to ahead when former *dangdut* singer, Aisyah Mochtar (Machica) claimed to have been married in a traditional Islamic ceremony in 1993 to the prominent Secretary of State, Moerdiono. Because of the 'informal' nature of the marriage, she had problems in having the marriage validated and the son born of that marriage, Muhammad Iqbal Ramadhan, legitimized. A few years earlier, Machicha had attempted to have the marriage legalized. However, she was unable to provide valid proof of the marriage contract when she made her submission for the legalization of the marriage to a religious court. Moerdiono never recognized the son, was not willing to provide maintenance and divorced her in an unofficial Islamic way. In the year 2010, she filed a petition with the Constitutional Court for a judicial review of the constitutionality of the stipulations, Article 2 Point 2 and Article 43 Point 1, of the Marriage Law that state that a child born out of wedlock has a civil relationship only with the mother.

The Constitutional Court decided to amend the wording of Article 43 (1) of Marriage Law on the legal status of a child born out of wedlock. The Article formerly stated "a child born out of legal wedlock has a civil relationship with its mother and the mother's family only".[74] The majority of the judges believed that this provision, based on the principle of equality before the law, contravened the Constitution and hence the Article was believed to curtail children's right to life as guaranteed by the Constitution (Article 28B Point 2). The court made

[74] Simon Butt, *The Constitutional Court and democracy in Indonesia* (Leiden/Boston: Brill Nijhoff, 2015), p. 125.

a decision which stated that paternal recognition must be accorded children born out of legal wedlock provided it can be proven that they have a blood relationship with the father.[75] Despite being welcomed by activists, the decision provoked criticism. Islamic groups believed the legitimation of children out of legal wedlock could be interpreted ambiguously and consequently used to legalize extramarital sex, not just informal religious marriage. Taking a different tack, some feminist groups criticized the decision saying it did not make a differentiation for children conceived as a result of rape.[76] This Constitutional Court decision has offered a promising breakthrough, although it has been not easy to implement. This case also reveals that the Constitutional Court is engaged in giving interpretations of Islamic law.

A couple of years before this judicial process, civil-society organizations had come up with an idea to improve the protection of human rights. Their concern centred on the problem of civil registration. In conjunction with government agencies, they set-up a common platform called *Konsorsium Catatan Sipil* (the Consortium for Civil Registration). The goal for which this movement strove was to help the government provide a national legal framework which would reinforce the right to a legal identity. To this end, they prepared a Civil Registration Bill and presented the draft to the Ministry of Home Affairs (MoHA) in 2005. The bill was passed in 2006. This Law invests the MoHA with the responsibility to co-ordinate, among other matters, inter-agencies in population administration. However, from the government's point of view, legal identity was still perceived to be primarily an administrative and registry affair.

Since then, children's rights to state recognition have become a central issue in Indonesian public debates. On the basis of the 2011 report of the Bureau of Statistics, the Ministry of Women's Empowerment and Child Protection has claimed that around 40

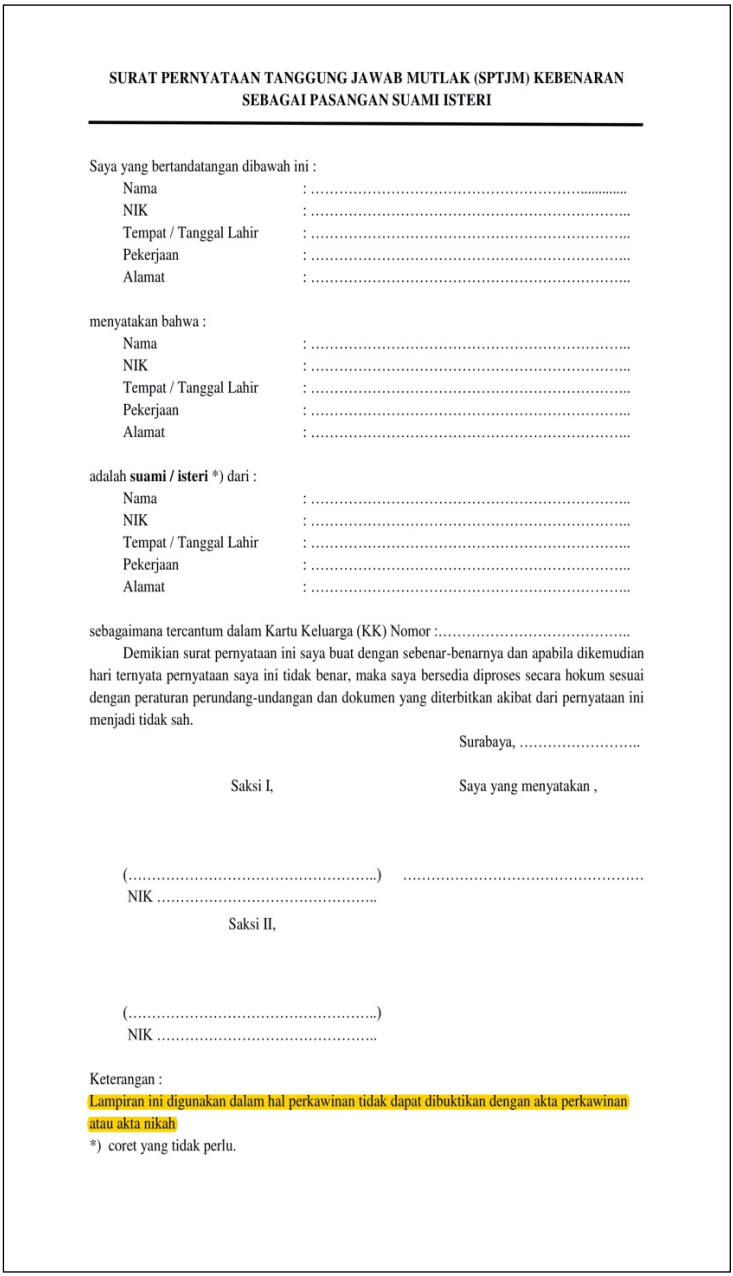
[75] Tutik Hamidah, 'The Rights of Children Born out of Wedlock: Views of Muslim Women's Organizations on Constitutional Court Judgement 46/2010', in *Women and Property Rights in Indonesian Islamic Legal Contexts*, ed. by John Bowen and Arskal Salim (Leiden: Brill, 2018), pp. 47–68.
[76] The Jakarta Post, *Paternity Ruling to Apply in Rape Cases* (7 Apr 2012).

percent of Indonesian children are not formally recognized by the state. Since 2012, the acceleration of the possession of issuing birth certificates for the protection of the child has become a common agenda point on the government's programme. This issue was claimed to be part of the Jokowi's administration vision, Nawa Cita (nine visions), which states that the possession of a birth certificate by children aged 0-18 years should reach 78 percent in 2016 to 90 percent in 2020. In 2015, eight related Ministries were involved in compiling a Memorandum of Understanding (*nota kesepahaman*). whose aim has been to frame a policy to accelerate the government's efforts to protect a child's right to a legal identity. The MoHA, as the body responsible for issuing birth certificates through the Office of Population and Civil Registration (*Kantor Catatan Sipil*) has co-ordinated this partnership. Furthermore, the Commission on Indonesian Child Protection also became actively involved in campaigning for the repeal of laws which obstruct the issuance of birth certificates for children. It criticized the law which obliged people to register a child's birth. It argued that, as the registration of a birth is a right, it is the state which has the obligation to register people's births.[77]

In response to its campaign, the MoHA issued Regulation No. 9/2016 which served as a legal basis for the district-level office of civil administration to enforce this programme. Article 4 of the Regulation states that "if the parents/guardian/rapporteur fail to procure a declaration of the birth from doctor/midwife, they can submit an SPTJM (*Surat Pernyataan Tanggungjawab Mutlak*, letter of absolute responsibility) containing the child's birth data (*data kelahiran*)." This letter allows the parents to obtain their child's birth certificate. In the letter, the biological father declares that the child was born to a mother, his wife, and mentions the name of the midwife. The Regulation also offers parents who do not have a marriage certificate but wish to include their names on the birth certificate a way out. They

[77] KPAI, *Akta Kelahiran Adalah Hak Setiap Anak Indonesia, Batalkan UU yang Persulit Pembuatan Akta Kelahiran!*, http://www.kpai.go.id/tinjauan/akta-kelahiran-adalah-hak-setiap-anak-indonesia-batalkan-uu-yang-persulit-pembuatan-akta-kelahiran, accessed 4 Mar 2019.

are required to have what is known as the SPTJM of the married couples (*suami isteri*). This is another form of SPTJM which should be signed by the guardian of the bride or anyone in the presence of two witnesses. It is clearly stated that this SPTJM can be used as a substitute for a marriage certificate. By submitting this document, the parents are able to receive a birth certificate mentioning the names of the mother and the father. Admittedly, this SPTJM is a highly ambiguous document as it overlaps and overrides both the legal norms of marriage registration and the Islamic court's jurisdiction on marriage legalization. The SPTJM can even be used to recognize a polygynous marriage which represents a fundamental challenge to the court's authority, at least as far as the recognition of the child is concerned. It also undermines the relevance of the decision of the Constitutional Court.



SURAT PERNYATAAN TANGGUNG JAWAB MUTLAK (SPTJM) KEBENARAN SEBAGAI PASANGAN SUAMI ISTERI

Saya yang bertandatangan dibawah ini :

Nama : .....
NIK : .....
Tempat / Tanggal Lahir : .....
Pekerjaan : .....
Alamat : .....

menyatakan bahwa :

Nama : .....
NIK : .....
Tempat / Tanggal Lahir : .....
Pekerjaan : .....
Alamat : .....

adalah **suami / isteri** *) dari :

Nama : .....
NIK : .....
Tempat / Tanggal Lahir : .....
Pekerjaan : .....
Alamat : .....

sebagaimana tercantum dalam Kartu Keluarga (KK) Nomor :.....

Demikian surat pernyataan ini saya buat dengan sebenar-benarnya dan apabila dikemudian hari ternyata pernyataan saya ini tidak benar, maka saya bersedia diproses secara hokum sesuai dengan peraturan perundang-undangan dan dokumen yang diterbitkan akibat dari pernyataan ini menjadi tidak sah.

Surabaya, ...

Saksi I, Saya yang menyatakan ,

(.....) .....
NIK .....

Saksi II,

(.....)
NIK .....

Keterangan :
Lampiran ini digunakan dalam hal perkawinan tidak dapat dibuktikan dengan akta perkawinan atau akta nikah
*) coret yang tidak perlu.

Figure 1.1. SPTJM *Suami Isteri* (SPTJM of husbands and wives)

Following this MoHA regulation on SPTJM, a number of local governments issued similar local regulations. For instance, the mayor of Depok in West Java issued Regulation No. 25/2016 to safeguard the implementation of this MoHA policy. Nevertheless, in practice, in some East Javanese regencies I observed that this SPTJM policy is not in force. The officials who reject it argue that they still consider a marriage certificate the most legitimate proof of the legal status of the offspring's parents. They even oblige the parents to include a marriage certificate when the latter want to update their family card (*kartu keluarga*). If they fail to present the marriage certificate, the legal status of the husband and wife is changed to 'unmarried' (*belum kawin*). While the wife is first on the list with the designated status of head of household, the husband is listed on the bottom row with the status of 'another' (*lainnya*). In one interview, a KUA staff member said that the Regulation on SPTJM seems to infringe on the position of Muslim marriage registration, which falls under the authority of the KUA. He argued that, in spite of the urgent call for children to possess a legal status, as is their constitutional right, the government should not issue regulations which challenge the authority of the KUA to register a Muslim marriage.[78]

6. Conclusion

For the majority of Muslims, marriage constitutes one of the most important aspects of their personal life because, without it, the family, considered the basic element of a Muslim community (*umma*), is not possible. Muslim communities demand that any modern reshaping of Islamic marriage should preserve its religious character as prescribed by Sharia law. However, the nub of the problem is that Sharia is not easy to define. The transformation of a scattered set of Sharia substantive laws into a codified form of Islamic law has been turned into an arena encompassing scholarly, political, and practical dimensions. In other words, the struggles over the state codification of Islamic law have been disrupted by the necessity for negotiations

[78] Interview with Pak Mad, an official at the KUA Sumbersari, East Java

between the state power, religious authorities and authorities within Islam itself. In the Indonesian context, this negotiation inevitably involves the debate about what makes a Muslim marriage valid.

In the late-nineteenth century, Dutch colonial policy was oriented towards producing new Islamic leaders, *penghulu*, who could be incorporated into its colonial administration. In the colonial framework of legal plurality, Sharia began to be transformed into a rigid norm of state law. Muslim marriage was made subject to legalization under the supervision of an official marriage registrar appointed by the Dutch. The regulation on registration was maintained by the post-colonial Indonesian government. The new Indonesian state established the Ministry of Religious Affairs and made the arrangement of Muslim marriage a priority on its agenda of nation-building and subsequently a significant reform was made. The government issued a Law which exclusively regulated Muslim marriage and divorce. Muslim marital matters came under the aegis of the Ministry of Religious Affairs. In 1974 the state unified the substantive legal rules pertaining to marriage in an effort to sort out the problem of the entrenched plurality of legal norms, religious affiliations, and local ethnic attachments.

In order to accommodate the demands of Muslim organizations, the state adopted the principle of 'dual validity'. The Law sanctioned a religious ceremony, but added the legal obligation of registration. Furthermore, the corpus of the KHI, which codified Muslim Family Law, not only endorsed the 'dual validity' principle as applied in the Marriage Law, but offered a new legal norm to deal with unregistered marriage. As one tactic in the battle to attain state recognition, it was decided that an unregistered marriage could have retroactive legalization (*isbat nikah*).

The answers to my question: "*How does the state deal with different religious orientations?*" can be formulated as follows. Despite the call since the political transition in 1998 for the sustained improvement in the status of women, Indonesia has been experiencing the rise of religious-based ideas. Islam has been increasingly emerging as a collective identity as the notions of the *umma* and religious piety have

been commodified by different political interests. As a consequence, since the 2000s, in many areas we have witnessed the emergence of Sharia-based sub-national regulations which have been the outcome of negotiations among political elites. They have championed Sharia-based regulations as a viable solution in their efforts to form a better Muslim society. These sub-national regulations also cover rules on public morality which, in particular aspects, challenge the regulations on Muslim marriage imposed by the national law, for instance, a local regulation on the ability to read the Qur'an, as an obligatory condition before a marriage ceremony can be concluded.

On the other hand, legal reform in the post-New Order era has involved dialogues and conversations between the younger generation, religious leaders, academics and activists. The issuance of the controversial CLD KHI and debates about inter-religious issues are irrefutable evidence of this. These debates have involved prolific interactions between the 'progressives' and the 'conservatives '. The progressives have supported the tendency towards incorporating modern ideas such as human rights and gender equality into marriage regulations; ideas which are challenged absolutely by those taking an old-fashioned approach who cling to traditional orthodoxy.

Marriage registration remains an important issue. The Indonesian public tends to perceive unregistered marriage (*nikah sirri* or *nikah di bawah tangan*) as an infringement of the rights of vulnerable women and children. Aware of this problem, the government attempted a new legal reform to right the matter and to raise the status of the KHI from a Presidential Instruction to a Law. It proposed a Bill on Islamic Marriage which included legal sanctions on certain infringements, for instance, people who do not register a marriage or a polygynous marriage. The Bill has elicited harsh reactions and been rejected by many conservatives. At present, the future of the bill is uncertain.

The debate on legal reform has also involved *ulama*. By issuing *fatwa*s, *ulama* have managed to reclaim their religious authority. Their *fatwa*s reveal a new trend in Islamic Law which sees it as *maṣlaḥa* (common good) and this has become an important legal reasoning underlining the essential position of the state in administering marital

relations. In the framework of *maṣlaḥa*, marriage registration is a viable means to prevent social harm. Nevertheless, this *maṣlaḥa* orientation is challenged by a literal approach to classical Islamic texts. These two religious orientations are locked in a contest to shape the content of the legal reform, but the different interpretations among *ulama* only serve to show that Sharia is not a fixed and complete body of legal prescriptions which have been derived from scriptural texts in a timeless manner.[79] This public debate also has the effect of "producing a degree of openness… that appears to have transformed the country."[80] Differentiating itself other *fatwa*-issuing bodies, through its self-proclaimed identity as a 'civil society' organization, the MUI has sought to provide the country with an agency of 'official national *mufti*.'[81]

The government's effort to improve the position of women in the matrimonial sphere and to protect children's rights is an unceasing endeavour. Developments over the last decade in Indonesia suggest that the judiciary and the civil administration have been making a meaningful contribution. The debate on Muslim marriage has shifted from a debate about the validity of Muslim marriage to a debate about the consequences of marriage registration for citizens' rights, primarily the rights of children to a legal identity. Firstly, the judicial authority provides a legally binding interpretation of the legal status of a child based on the Constitution. This decision grants paternal recognition to children born out of wedlock. Secondly, because the legal status of children has become an important issue, a government body has issued a programme to accelerate the acquisition of birth certificate. The rub is that this policy appears to overlap with the existing rules on marriage registration, because a marriage certificate is no longer important administratively to prove the legal status of a marriage. Despite the conflict between the rules, in my opinion, the existence of this policy can be interpreted as a step forward in the

[79] Hefner, 'Sharia Law and Muslim Ethical Imaginaries in Modern Indonesia', p. 91.
[80] Cammack, Bedner, and van Huis, 'Democracy, Human Rights, and Islamic Family Law in Post-Soeharto Indonesia', p. 13.
[81] Tim Lindsey, *Islam, Law and the State in Southeast Asia*, Vol. I: In edition (London: Tauris, 2012), p. 124.

process of state formation.[82] It enables the state to penetrate deeply into communities and to generate individual rights and obligations based on a national identity rather than membership of a certain arrangement.

In the next chapter, I shall discuss continuity and change in the laws and procedures governing marriage registration. I analyse the bureaucratic reform of the administration of Muslim marriage which falls under the MoRA and investigate how this reform affects the implementation of the marriage registration performed by the KUA on a sub-district level.

[82] Michael G. Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia* (Princeton: Princeton University Press, 2002).

CHAPTER 2

Reforming the Bureaucracy of Muslim Marriage

Pemerintah berharap calon pengantin mendaftar sendiri, mengurus persyaratan dari desa langsung dibawa ke KUA. Tapi masyarakat belum siap. Secara tradisi mereka datang ke modin. Di sisi lain, petugas KUA juga minim turun ke desa untuk pemeriksaan status calon pengantin dan wali nikah. Situasi di masyarakat sangat rumit."

Haji Mustofa, a village religious official (*modin*, was P3N) in Sumbersari

The government expects the couples to prepare the documents for marriage registration themselves and bring them from the village office to the KUA. However, people are not ready to do this yet. They go to *modin*, which is the tradition. Moreover, officials on sub-district level seldom come into villages to examine the legal status of the couples and the marriage guardian. The social situation on the ground is extremely complicated."

1. Introduction

In the previous chapter, I have indicated that post-New Order Indonesia has been experiencing a rise in religious identity which continues to contest the state's attempt to reform Muslim marriage through legislation. Nevertheless, at the same time there is a tendency among *ulama* to speak of the concept of *maslaḥa* (common good)

which is increasingly beginning to resemble the state's idea of public order. On the secular side of the coin, the non-religious state bureaucracy has been emerging as an alternative force introducing reformatory ideas into strategic regulations. This bureaucratic reform has stimulated the government's public service institutions to strengthen the protection of citizens' rights.[1] Despite the conflicts arising from the state's insistence on legal norms for marriage registration and other problems such as the underperformance of bureaucrats,[2] this reform is an important step in the way the state is endeavouring to cope simultaneously with Islamic affairs and citizens' rights.

In this chapter, I try to get a grip on the practice of the state. I look at the bureaucratic and legal reforms in the administration of Muslim marriage which fall under the aegis of the Ministry of Religious Affairs (MoRA) and how these affect the administration of marriage registration in society. To this end, the main question of this chapter is: In what ways does the reform shape the bureaucracy of Muslim marriage which, in practice, is implemented by the Kantor Urusan Agama? The KUA is a state religious agency which deals exclusively with the Muslim marriage ceremony (*akad nikah*) including its registration. Within the KUA, the *penghulu* is the key actor as the state-supported religious official who is responsible for validating a marriage ceremony.

It is often said that the MoRA is responsible for dealing with more practical questions of religious identity or theological disputes about what 'proper' religion should be.[3] However, when it comes to Islamic marriage, religion has not been the overriding issue. Instead, the MoRA has been confronted with the problem of corruption. The MoRA has

[1] In 2010, the Indonesian government issued a main guideline for bureaucratic reform covering a period of 5 years. *Peraturan Presiden* (Presidential Regulation) No. 81/2010 tentang Grand Design Reformasi Birokrasi 2010-2025 (On the Grand Design of Bureaucratic Reform of 2010-2015).

[2] Nurdiana Gaus, Sultan Sultan, and Muhammad Basri, 'State Bureaucracy in Indonesia and its Reforms: An Overview', *International Journal of Public Administration*, vol. 40, no. 8 (Routledge, 2017), pp. 658–69.

[3] Sezgin and Künkler, 'Regulation of Religion and the Religious: The Politics of Judicialization and Bureaucratization in India and Indonesia', p. 450.

attempted to address this problem by instigating a series of reform in order to reinforce its rational legal authority[4] and legitimacy.[5] Although it seems that attempts at reform have so far been half-hearted, the state is under growing pressure to address the issue of citizens' rights. Political actors have agreed that Muslim marriage registration is an integral part of the civil registration system. Here we encounter the problem of falling between two stools. They formulate citizenship by expressing preferences in a way which has been strongly influenced by modern, state-centric conceptions.[6] According to the Law on Civil Administration, marriage is a crucial life moment to which the legal obligation of registration is applied. A marriage certificate (*akta nikah* or *buku nikah*) issued by the KUA is accordingly deemed equivalent to a *dokumen kependudukan* (civil document). I am embracing this modern approach, they have somewhat lost sight of the more traditional views on marriage which are still very much embedded in village life.

In this chapter, my purpose is to argue that the KUA has endeavoured to introduce an array of reforms to redefine its position, interpreting its institution not just in its narrow sense as a religious bureaucracy which deals with Islamic marriage but taking a wider perspective on it as the administration of public service. In this light, the KUA plays a role as a prominent government frontline public service agency helping the government protect the rights of citizens

[4] Weber introduced this concept in response to the transition from medieval to modern societies and states in Europe. It refers to authority which is legitimized by a rational-legal and interdependent division of labour, characterized by economic and occupational specialization and complex rational-legal systems, in which highly specialized bureaucracies are the norm. Weber called this rational justification of obedience to authority "domination by virtue of legality, by virtue of the belief in the validity of legal statute and functional competence, based on rationally created rules." Max Weber, 'Politics as a Vocation', in *From Max Weber: essays in sociology*, ed. by Hans H. Gerth and C. Wright Mills (New York: Oxford University Press, 1946), p. 79.

[5] Legitimacy is a central concept which defines how individuals accept a power and conceive their obedience as a commitment. It is critical because it constitutes any normative claims made by a government. R. Stryber, 'Legitimacy', *International Encyclopedia of the Social & Behavioral Sciences* (2001), pp. 8700–4.

[6] Pamela J. Stumpo, 'Challenging the Practice of the State, but Beholden to Its Image: Women's Activists, Academics, and the Public Take on Egypt's Citizenship Laws', in *The Everyday Life of the State: A State-in-Society Approach*, ed. by Adam White (Seattle: University of Washington Press, 2013), p. 189.

more effectively. However, in the eyes of its superior, the MoRA, religious issues to do with the marriage ceremony still take pride of place. At the core of the problem lies the position of the *penghulu.* Time was when the head of the KUA did not necessarily have to be a *penghulu*, but now the MoRA has returned *penghulu* to the core of the KUA bureaucracy, ensuring the head of the KUA must always be the older of this office in an effort to secure its religious credibility. This was the first reform but more were to follow. Other changes have seen the elimination of informality and the concomitant charging of official fees for marriage registration. The state requires the KUA to be a centralized, powerful agency, firmly in charge of marriage registration and it has attained its goal by diminishing the intermediary roles played by informal village religious leaders. However, in doing so it has failed to appreciate the social importance of the latter. Lastly, the MORA has struggled with the integration of civil administrative data into marriage registration system. To sum it up in one sentence, the implementation of this series of reform was more easily said than done.

This chapter begins with a historical sketch of the formation of the roles of the *penghulu* and the KUA in the years immediately after Indonesian Independence. Section 2 focuses on the re-organization of the KUA bureaucracy and the re-promotion of *penghulu* as key actors in it. Section 3 examines the core problem in the administration of Muslim marriage, that is, the administration fee, which put the *penghulu* in a real predicament, and its upshot, the elimination of assistant marriage registrars from the bureaucracy. Section 4 deals with the reform of the administration fee and other bureaucratic matters and how they relate to the discourses about Muslim marriage registration and the protection of citizens' rights. This section ends with a conclusion.

2. *Penghulu* in the Formative Period

Scholars have argued that the emergence of a modern nation-state has made religious affairs an integral part state control. Deliar Noer's 1978

work emphasized that the position of Islam in Indonesia was not at all easy as it was subject to debate not only between secular and Islamic groups but also to competition in Muslim circles.[7] Gradually, the political process of administering Islam has proceeded to what is called "state Islam",[8] a form of Islam endorsed by the state. Consequently, as they are embedded in religious affairs, marriage norms have been unavoidably reshaped by the state actors to tackle matters in the national interest such as population control.[9] This has been done, as Muller has remarked, by empowering "state-funded administrative bodies to guide and influence Islamic discourses in diverse ways."[10]

This section specifically explores how the state deals with the administration of Muslim marriage. It examines the historical trajectory of the bureaucracy of Muslim marriage under the aegis of the MoRA. This bureaucracy is understudied, particularly when compared to topics related to marital dispute settlement by Islamic courts.[11] After the Indonesian state began to reform the Muslim husband's unilateral rights to divorce by the introduction of judicial divorce in 1974, the legal practices in Islamic courts have grown enormously in importance as a topic of debate. Matters have reached such a pitch that not just their practices but the very existence of Islamic courts has become the subject of political debate. In fact, political pressure demanding the abolition of Islamic courts was very nearly successful after the UU (Law) No. 19/1948 on the Judicial Power was passed. Chapter 35 (2) of this Law decreed that disputes between Muslims should be resolved under the jurisdiction of a

[7] Deliar Noer, *The Administration of Islam in Indonesia* (Ithaca, NY: Cornell Modern Indonesia Project, 1978).
[8] Moch Nur Ichwan, 'Official Reform of Islam: State Islam and the Ministry of Religious Affairs in Contemporary Indonesia, 1966-2004' (Tilburg University, 2006).
[9] Maznah Mohamad, 'Malaysian Sharia Reforms in Dlux: The Changeable National Character of islamic Marriage', *International Journal of Law, Policy and the Family*, vol. 25, no. 1 (2011), pp. 46–70; Nancy F. Cott, *Public Vows: A History of Marriage and the Nation* (Cambridge, MA: Harvard University Press, 2002).
[10] Müller, *The Bureaucratization of Islam and its Socio-Legal Dimensions in Southeast Asia: conceptual contours of a research project*, p. 2.
[11] See, for instance, Nur Ahmad Fadhil Lubis, *Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia* (Los Angeles: University of California, 1994).

general court.[12] The imputation of this chapter was that Islamic courts had been integrated into the general courts. However, this law never came into force.[13] It was superseded by UU Darurat (The Emergency Law) No. 1/1951 on the Jurisdiction and Procedures of the Civil Courts which stipulated the continued existence of Islamic courts and the abolition of all indigenous *adat* courts.[14] Under these circumstances, the administration of Muslim marriage remained relatively free of political intervention.

The modern bureaucratic administration of Muslim marriage was set up simultaneously with the foundation of the MoRA by the Indonesian government on 3 January 1946, founded on *Penetapan Pemerintah* (the Government Declaration) No. 1/S.D. 1946. The MoRA itself was in fact an extension of what had existed since the closing years of the nineteenth-century in the Dutch East Indies, initially as the *Kantoor voor Inlandsche Zaken* (Office for Indigenous Affairs). This became the Bureau of Religious Affairs (*Kantoor voor Inlandsche en Arabische Zaken*) in early 1899.[15] In this period of administrative changes, the colonial administration reorganized the hierarchy of the *penghulu*. These were government-sponsored officials charged with handling matters pertaining to Islamic affairs, including marriage and divorce on district and sub-district levels.[16] *Penghulu* were answerable to the *Bupati* (Regent). Under the Japanese occupation from 1942 to 1945, this Office of Religious Affairs was renamed the *Shumubu* or *Kantor Oeroesan Agama*.[17] Prominent staff members of the former

[12] Jaenal Aripin, *Jejak Langkah Peradilan Agama di Indonesia* (Jakarta: Kharisma Putra Utama, 2013), p. 70.

[13] According to Lev, Law 19/1948 Chapter 7 made no mention at all of a distinct jurisdiction for Islamic courts implying their demise. Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 65.

[14] Emergency Law 1/1951 on the Jurisdiction and Procedures of the Civil Courts. See also van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 46.

[15] Rini Rusyeni, 'Fragmented Voices: The Personal Archives of the Advisors of Inlandsche Zaken, 1899-194' (Leiden University, 2017), p. 13.

[16] Karel A. Steenbrink, *Beberapa Aspek tentang Islam di Indonesia Abad ke-19* (Jakarta: Bulan Bintang, 1984). Further details about the *Kantoor voor Inlandsche Zaken*, read Husnul Aqib Suminto, *Politik Islam Pemerintah Hindia Belanda: Het Kantoor voor Inlandsche zaken* (Jakarta: LP3ES, 1985), pp. 99–107.

[17] Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 44.

Dutch-established office continued to run its successor. Worried about the strength, or lack of it, of its control over religious leaders (*ulama*), the Japanese military administration decided to establish the *Shumuka* to expand the powers of the *Shumubu* in various *karesidenan* (regencies) in 1944.[18] The *Shumuka* was supposed to act as the co-ordinator of local *ulama* but with the obvious aim of exerting more control over them.[19] The *Shumubu* served as the foundation of the establishment of the MoRA in 1946.

Since 1946, the mission of the MoRA has been to be the most prominent agency responsible for the supervision of all matters related to marriage and reconciliation between Muslims.[20] The most obvious change which has taken place since the formation of the MoRA was the reorganization of the existing judicial and executive institutions on both national and regional levels. On the basis of *Penetapan Pemerintah* (Government Decree) No. 5/SD 25 March, 1946, the MoRA took over control of both lower Islamic courts and the Supreme Islamic Court (*Mahkamah Tinggi Islam*) from the Ministry of Justice. The upshot was that, on the regional level of religious office, the name of the *Shumuka*, was changed to *Djawatan Agama Daerah* (Regional Religious Bureau).[21] Ever since, *penghulu*, who had previously been subordinate to a *Bupati*, have fallen directly under the supervision of the MoRA.

The rules and regulations governing Muslim marriage were legally defined more clearly when the central government issued UU (Law) No. 22/1946 *tentang Pencatatan Nikah, Talak dan Rujuk* (on the Registration of Marriage, Divorce and Reconciliation). The Law placed the practical implementation of Muslim marriage administration in the hands of the *Pegawai Pentatat Nikah* (the Marriage Registrar). Article 1 (1) of the law states: "A marriage which is concluded in

[18] Ahmad Syafii Maarif, *Islam dan Politik: Teori Belah Bambu, Masa Demokrasi Terpimpin, 1959-1965* (Jakarta: Gema Insani Press, 1996), p. 20.
[19] Aiko Kurasawa, 'Mobilization and Control: A Study of Social Change in Rural Java, 1942-1945' (Cornell University, 1988), pp. 400–4.
[20] Noer, *The Administration of Islam in Indonesia*, p. 18.
[21] Mujiburrahman, *Feeling Threatened: Muslim-Christian Relations in Indonesia's New Order* (Amsterdam: Amsterdam University Press, 2006), p. 126.

accordance with the precepts of Islam, henceforth referred to as a marriage, is to be supervised by a marriage registrar who is appointed by the Minister of Religion or other designated officials."[22] On the practical level, this law indirectly enjoined a division between *penghulu kabupaten* (regency *penghulu*) and *penghulu hakim* (judge or *qadi penghulu*). The role of the former was to act as the marriage registrar, while the latter adjudicated on Muslim marital affairs in an Islamic court. A year or so later, this division was formally confirmed in *Keputusan Menteri Agama* (KMA, the Decree of the Minister of Religious Affairs) No. 6/1947 on 8 December 1947 pertaining to the division of tasks between the two institutions.[23]

In the late 1940s, the central government issued *Peraturan Pemerintah* (Government Regulation) No. 33/1949 on the *susunan dan lapang pekerjaan* (the structure and the tasks) of the MoRA. One of these was "to regulate, undertake and observe all aspects related to registration of marriage, reconciliation and repudiation among Muslims." Practically, this function was overseen by the *jawatan nikah*, *talak*, *rujuk* (Section on Marriage, Repudiation and Reconciliation).[24] Interestingly one important aspect of this regulation was the use of the designations of *Kantor Kenaiban Kecamatan* (Office of the Sub-district Religious Representatives) and *Kantor Kenaiban Distrik* (Office of the District Religious Representatives), both supervised by the *Kantor Kepenghuluan Kabupaten* (Office of the Regency *Penghulu*). By its construction of this hierarchy, the government officially restored the term *naib,*[25] as it had been applied in the colonial times,[26] as the designation of the representative of the Regency *Penghulu* on a sub-district level.[27] In my view, this reorganization can be seen as a

[22] The Law 22/1946 on the Registration of Marriage, Divorce and Rreconciliation.
[23] Abdul Manan, *Pembaruan Hukum Islam di Indonesia* (Depok: Kencana, 2017), pp. 2–3.
[24] This division was regulated by *Keputusan Menteri Agama* (Decree of the Minister of Religions) No. 2 1185/KJ November 1946 and was then reaffirmed by *Peraturan Pemerintah* (Government Regulation) No. 33/1949 tentang Susunan dan Lapang Pekerjaan Kementerian Agama (on the structure and the task of the Ministry of Religious Affairs).
[25] In the Sunni tradition of Islamic law, *naib* refers to the authorized representative of a *qadi* (judge) or local magistrate.
[26] Lubis, *Islamic Justice in Transition: A Socio-Legal Study of the Agama Court Judges in Indonesia*, p. 85.
[27] Clifford Geertz, *The Religion of Java* (Illinois: The Free Press, 1960), p. 202.

government strategy to maintain its control over Muslim marriage without putting itself to too much trouble since people were already familiar with such institutions.

In 1947, the bureaucracy administering Muslim marriage also underwent a phase during which informal religious officials on village level were incorporated as official marriage functionaries. The government promoted the village-level religious officials, namely *kaum* (*modin*, *amil*, or *lebei*), to be P3NTR (*Pembantu Pegawai Pencatat Nikah, Talak dan Rujuk* or Assistant Marriage, Divorce and Reconciliation Registrars), to assist the marriage registrars on higher levels.[28] This process signified the bureaucratization of traditional authorities. It transformed them into a modern organizational team whose main role was to bridge the relationship between the state and society.[29]

However, the office of *modin* was not solely a matter for the MoRA, it also fell under the aegis of the Ministry of Home Affairs. The reason was a *modin* dealt with the religious matters of village residents and this was assumed to make them part of the village administration. This village administration was, and is, under the control of the Ministry of Home Affairs. Therefore, according to *Maklumat Bersama* (the Shared Declaration) No. 3/1947 of the two Ministries, the *modin* should be treated the same as a *pamong desa* (a village official). In the 1980s, especially following the issuance of the UU No. 5/1975 on *pemerintahan desa* (village administration), the Soeharto regime incorporated the *modin* into the village administration under the title *Kepala Urusan Kesejahteraan Rakyat* (*Kaur Kesra*, head of People's Welfare).[30] However, this did not apply to all of them. In some villages like in Pasuruan, there has been a division between *modin kawin*

[28] More details about their tasks and technicalities are regulated in the Instruction of the Minister of Religion No. 4/1947 re the obligations of a marriage registrar.
[29] There is a variety of names given to this informal authority, such as *modin*, *kaum* (community leader) and *rois* (religious leader). Achmad Zainal Arifin, 'Defending Traditions, Countering Intolerant Ideologies: Re-energizing the Role of Modin in Modern Java', *Al-Jami'ah: Journal of Islamic Studies*, vol. 55, no. 2 (2017), pp. 265–92; Pradjarta Dirdjosanjoto, *Memelihara Umat: Kiai Pesantren-Kiai Langgar di Jawa* (Yogyakarta: LKiS, 1999), p. 195.
[30] The Law 5/1975 on *Pemerintahan Desa* (village administration).

(marriage *modin*) and *modin kematian* (funeral *modin*). The village administration only incorporated *modin kematian* into its body, not *modin kawin* because they were already organized by the district office of religious affairs. The upshot was that the *modin* was put in a problematic position with a foot in the camp of each of two Ministries. Although they were entitled to identify themselves as P3NTR, with the exception of those officially recognized as *pamong desa*, their legal status was never set out in black and white. Until recently (see Section 4 of this chapter), this ambivalent status was a cause of confusion.

The MoRA has passed down the official reform of Islam to lower-level agencies by exercising a strict mechanism of control to bring them into line with the policy of the central administration.[31] In the early 1950s, the designation *Kantor Urusan Agama Kecamatan* (KUA, Sub-District Office of Religious Affairs), hereinafter referred to as KUA, was the public designation of the MoRA branch-office on sub-district level whose primary task was to deal with the administration of Muslim marriage. In the course of the subsequent transformation this entailed, the *naib* who was responsible for *kantor kenaiban kecamatan*, given equivalent status to the head of the KUA. The equivalence of a *naib* with the head of the KUA can be seen in the elucidation to *Peraturan Menteri Agama* (PMA, the Regulation of the Minister of Religion) No. 1/1952 on *wali hakim* (magistrate-guardians). This regulation asserted that, because of his equivalent status to the head of the KUA, the *naib* had the authority to act as magistrate-guardian if a biological guardian of a bride could not be present (*mafqud*). Although the term *naib* is no longer currently in use, I have personally seen that local Muslims are still comfortable addressing the head of the KUA as *naib*.

The year 1955 signified a major change in the bureaucracy of Muslim marriage administration. PMA No. 1/1955 on *kewajiban-kewajiban pegawai pencatat nikah* (the obligations of marriage registrars) restructured the organization of the KUA. It declared that

[31] Sezgin and Künkler, 'Regulation of Religion and the Religious: The Politics of Judicialization and Bureaucratization in India and Indonesia', p. 469.

marriage registration could only be done by *naib kepala* (head of *naib*), *naib* or *naib pengganti* (a substitute). In the same year, the MoRA also standardized the documents required for the registration of a marriage, repudiation and reconciliation of marriage, which included the marriage examination form (*daftar pemeriksaan nikah*), books for marriage registration, repudiation or reconciliation (*buku pendaftaran nikah, talak, dan rujuk*) and a certificate of marriage, repudiation or reconciliation (*surat nikah, talak dan rujuk*).[32]

Under its former jurisdiction, the KUA was vested with the authority to register divorce initiated by men (*talak*). This was at the time a Muslim husband could divorce his wife simply by declaring a repudiation, which he was then required to register with the KUA.[33] Meanwhile, when a wife demanded a divorce but the husband could not or did not want to proclaim it, she had to petition for divorce, called *rapak*, in an Islamic court. In this regard, Hildred Geertz stated:[34]

> "It is easy to get divorce in Java. Husband and wife usually notify the village religious official (the *modin*), who helps with weddings and divorces and conducts funerals. He then accompanies them to the sub-district religious official (the *naib* [the head of KUA]), who actually performs the marriages and divorces and keeps the records."

Nakamura has questioned the meaning of the phrase "performs the marriages and divorces and keeps the records". In her opinion, describing the role of the *naib* in officiating at marriages, divorces and keeping records is too narrow. As a religious official, the *naib* had a broader responsibility, guiding people to behave in accordance with Islamic law. When faced with instances of divorce, his first step was to give advice to the parties concerned and encourage them to reconsider the intention to dissolve their marriage. If the husband believed that divorce was the only way to improve the situation, he examined them

[32] PMA No. 15/1955 *tentang Contoh-contoh Buku Pendaftaran Nikah, Talak dan Rujuk* (On Examples of Registration Forms for Marriage, Repudiation and Reconciliation of a Marriage).
[33] Mark Cammack and R. Michael Feener, 'The Islamic Legal System in Indonesia', *Pacific Rim Law & Policy Journal*, vol. 21, no. 1 (2012), p. 17.
[34] Hildred Geertz, *The Javanese Family: A Study of Kinship and Socialization* (New York: The Free Press of Glencoe, 1961), p. 71.

both to see if the marriage dissolution could be legally approved according to Islamic law. After completing this examination, he recorded the divorce and issued a divorce decree.[35] Nakamura also noted that the KUA, the Islamic court and BP4 were integral parts of the system of the administration of Islamic law, even though, on the face of it, they appeared to be mutually unrelated.[36]

UU No. 1/1974 on marriage ushered in a significant change in the jurisdiction of the KUA. Since it has been in force, the KUA has no longer had to deal with a unilateral divorce pronounced by the husband. All divorces must be declared before an Islamic court. Despite this fundamental change, the jurisdictions of the KUA and the Islamic court remain interrelated. The Islamic court delivers a report of the divorce to the KUA with which the parties' marriage was registered. It is then the duty of the KUA to execute the court's decision of *isbat nikah* (retrospective marriage confirmation). Furthermore, the KUA also facilitates marital reconciliation (*rujuk*) between the husband and the wife during the prescribed waiting-period (*iddah*) subsequent to pronouncement of the divorce. The document of reconciliation is then presented to the Islamic court as a legal proof of the annulment of their divorce.

3. Institutional Transformation and the Re-centralization of *Penghulu*

A series of organizational reforms in marriage administration has taken place on the central/national level since Indonesia declared its Independence. Since 1963, all matters related to Muslim marriage have been handled by the Directorate of *Urusan Agama Islam* (Islamic Affairs). As of 1967, this directorate came under the aegis of the Directorate General for Guidance of Islamic Community (*Bimbingan Masyarakat Islam*, henceforth referred to as Bimas Islam). Other Muslim affairs such as Islamic education, Islamic courts and Islamic

[35] Hisako Nakamura, *Divorce in Java: A Study of the Dissolution of Marriage among Javanese Muslims* (Yogyakarta: Gadjah Mada University Press, 1983), pp. 107–8.
[36] *Ibid.*, p. 106.

higher education were also run by the Directorate General.[37] This structure was reorganized again at the end of the 1970s. This reorganization was deemed necessary because of the wide range of matters with which the MoRA had to cope. To lighten the workload, the Directorate-General of Islam was split into two bodies. The first, the Directorate-General for the Guidance of the Islamic Community and Pilgrimage (*Bimbingan Masyarakat Islam dan Urusan Haji*) deals with matters pertaining directly to religion, including marriage and pilgrimage. Meanwhile, Islamic education and Islamic courts were henceforth to be administered by the second body, called the Directorate-General for the Social Development/Advancement of Islamic Institutions (*Bimbingan Masyarakat Pembinaan Kelembagaan Agama Islam*).

For some decades, the Directorate *Urusan Agama Islam* had the task of managing more than 5,600 KUA offices and more or less 8,000 *penghulu* throughout the nation. In 2010, the nomenclature of the body was changed to *Direktorat Urusan Agama Islam dan Pembinaan Syariah* (Directorate of Islamic affairs and the Advancement of *Shari'a*).[38] This change meant the scope of the control of the directorate was broadened from focusing solely on marital affairs (*penghulu* and the KUA) to covering mosque and *halal* matters. A decade later, another fundamental change occurred. The government decreed that the organization of marriage administration and familial affairs should be undertaken by a specialized body. The MoRA issued Regulation No. 42/2016 on *Organisasi dan Tata Kerja Kementerian Agama* (Organization and Operating Procedures of the MoRA), Article 387, which affirmed the setting-up of a new directorate, namely *Bina Kantor Urusan Agama dan Keluarga Sakinah* (Office for the Organization of Religious Affairs and Harmonious Families/Family

[37] Regulated by *Keputusan Menteri Agama* (Decree of the Minister of Religion) No. 56/1967 *tentang Struktur Organisasi, Tugas, dan Wewenang Departemen Agama* (On the Structure, Tasks and Competences of the Department of Religion), dated 30 May 1967.

[38] Kementerian Agama, *Profil Direktorat Urusan Agama Islam dan Pembinaan Syariah* (Jakarta: Kementerian Agama RI, 2013).

Cohesion).[39] With the passing of this regulation, the KUA was assured of its own specialized home on the national level.

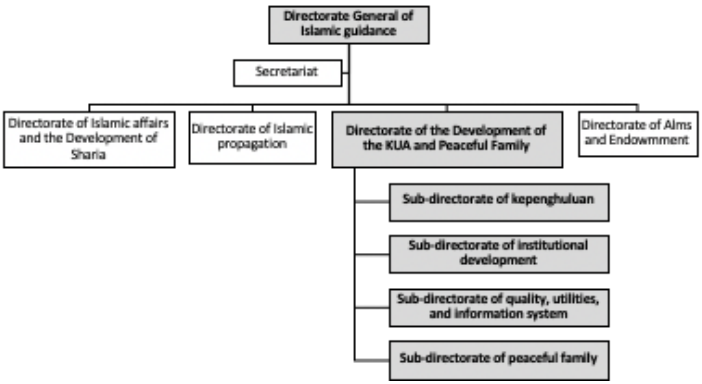
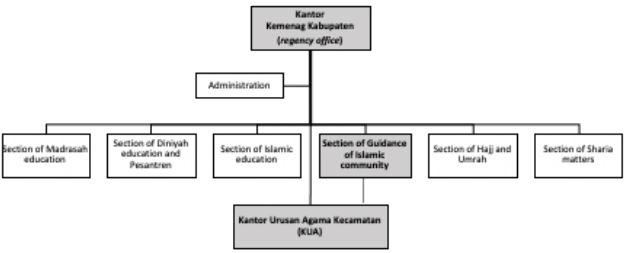

Directorate General of Islamic guidance
Secretariat
Directorate of Islamic affairs and the Development of Sharia
Directorate of Islamic propagation
Directorate of the Development of the KUA and Peaceful Family
Directorate of Alms and Endowmment
Sub-directorate of kepenghuluan
Sub-directorate of institutional development
Sub-directorate of quality, utilities, and information system
Sub-directorate of peaceful family

Figure 2.1. The structure of the bureaucracy of the KUA on the Ministry level according to the PMA No. 42/2016

In this structure, the KUA is under the control of the regency/town office of the MoRA (*Kantor Kementerian Agama Kabupaten*). The relationship is hierarchal. Therefore the work of the head (*kepala*) is carried out under the direction of Provincial Office of Religious Affairs (*Kantor Wilayah Kementerian Agama Provinsi*, henceforth referred to as *Kanwil*). In the everyday running of the department, it is *kepala seksi* (the section head) of the *Bimbingan Masyarakat Islam* (Guidance of the Islamic Community), abbreviated to *Kasi Bimas Islam*, in the district office of religious affairs who is responsible for overseeing the performance of the KUA offices.


Kantor Kemenag Kabupaten (regency office)
Administration
Section of Madrasah education
Section of Diniyah education and Pesantren
Section of Islamic education
Section of Guidance of Islamic community
Section of Hajj and Umrah
Section of Sharia matters
Kantor Urusan Agama Kecamatan (KUA)

[39] PMA No. 42/2016 on *Organisasi dan Tata Kerja Kementerian Agama* (Organization and Operating Procedures of the MoRA).

Figure 2.2. Structure of the regional and sub-district offices of religious affairs according to the PMA No. 42/2016

Generally speaking, the KUA is responsible for handling Islam-related affairs in one sub-district. The registration and reconciliation of Muslim marriages lie at the very heart of its activities, but it also has other matters to deal with such as the running of mosques, alms, property endowment and family harmony (*keluarga sakinah*). In its handling of marital affairs, the head of the KUA acts as a marriage registrar (*Pegawai Pencatat Nikah*, abbreviated as PPN). Article 2 of the PMA No. 11/2007 on marriage registration states that "the PPN is an official who verifies documents, supervises and registers marriage/reconciliation, administers husband-initiated divorce (*cerai talak*), wife-petitioned divorce (*cerai gugat*) and marriage counselling."

This Article makes it quite clear that the KUA also undertakes marriage counselling and runs courses on preparation for marriage for brides and grooms (*kursus calon pengantin*). In the past, the counselling was the task of a body called *Badan Penasehat Perkawinan dan Penyelesaian Perceraian* (BP4, Board of Marriage Counselling and Divorce Settlement). The establishment of this advisory board was initiated locally in the course of the 1950s.[40] In 1962 it was unified nationally. In 1977, its name was changed to *Badan Penasihatan Perkawinan, Perselisihan dan Perceraian* (Board of Marriage Counselling, Dispute Settlement and Divorce) based on Decree of the Minister of Religious Affairs (*Keputusan Menteri Agama*, KMA) No. 30/1977 on *Penegasan Pengakuan Badan Penasihatan Perkawinan, Perselisihan dan Perceraian* (Affirmation of the Acknowledgement of the Marriage Counselling, Dispute Settlement and Divorce). Since then, the board has been a semi-official body within the MoRA. Its principal mission is to lend assistance and to solve marital disputes. Couples who wish to get a divorce are expected to attend the BP4 for counselling. Upon receiving confirmation of a break-down in marriage from the members of the board, declared in the form of *Naskah*

[40] Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 151.

Penasihat (Advisor's Note), the couples then go to the KUA to formalize their divorces.[41]

Since 1998, the MoRA was financially prevented from funding this board because of the shortfall in its budget. As a consequence, in 2009, following the 14th BP4 National Conference, BP4 was transformed into an independent organization, some of whose staff members are high officials in the MoRA. Nevertheless, this board is in fact still involved in Ministry programmes such as *kursus pra nikah* (pre-marital course).[42] In the wake of this change, the BP4 now focuses only on marriage counselling and is no longer involved in divorce. Therefore, the abbreviation BP4 now stands for *Badan Penasihatan, Pembinaan dan Pelestarian Perkawinan* (Board for the Counselling, Fostering and Perpetuation of Marriage).[43]

Functions in the KUA are classified into three categories. They consist of the head (*kepala*), functional officers (*pejabat fungsional*) who include marriage functionaries (*penghulu*) and the administrative staff. In the past, the KUA functionaries were simply categorized into two groups: the *kepala* and the *pelaksana* (officials). Under the 2001 MoRA Regulation, the *kepala* KUA is a structural position (*jabatan struktural*) who also serves as the PPN. In the past, any officials could be promoted to this position and they did not have to be *penghulu*.[44] *Penghulu* are trained, specialized marriage functionaries whose sole responsibility is to conduct a marriage ceremony. They do not have the authority to sign marriage certificates, although there has been a debate about it. The authority to sign marriage certificates is vested in the PPN. However, some argued that *penghulu* were allowed to authorize marriage certificates if the PPN delegated his mandate.

[41] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 185.
[42] In 2013, the Directorate-General on Islamic Guidance issued Regulation No. DJ. II/542 concerning the organization of pre-marital courses which declares that BP4 is one of the organizers.
[43] See the KMA No. 114/2009 *tentang Penetapan Pengurus BP4 Pusat* (on the Officials of the Central BP4).
[44] KMA No. 517/2001 *tentang Penataan Organisasi Kantor Urusan Agama Kecamatan* (on the organization reorganization of the Sub-district KUA)

This dispute has now been resolved since the MoRA issued a new regulation on the reorganization of the KUA in 2016.[45] The regulation stipulates that the *kepala* KUA is no longer a structural position (*jabatan struktural*) but is considered an additional task (*tugas tambahan*) which can be exercised exclusively by a *penghulu*. In other words, it is now only *penghulu* who are eligible to act as head of the KUA (the PPN). As a consequence, the *kepala* KUA who are not *penghulu* have to meet certain standards attained by passing a set of competency trainings and tests to be *penghulu*.[46] When they have passed the exams, they are awarded a certificate which declares their fitness to assume a functional position (*jabatan fungsional*) as *penghulu*.

This regulation has wrought some significant changes. Firstly, the regulation pragmatically endorses the uniformization of who should serve as the PPN. Secondly, even more importantly, it seems that the MoRA has demanded the reshaping of the position of *penghulu* placing him at the centre of the KUA so as to reclaim the KUA's specialization in religious affairs. This development brings us back to the concept of *naib*. In the past, a *naib*, who was a religious person and acted as the representative of the regency *penghulu*, headed the *kantor kenaiban kecamatan*. Now it is the *penghulu* who are qualified in religious matters and are fully responsible for the KUA. Those heads of the KUA who are not *penghulu* are encouraged to take the certification examination which can qualify them as *penghulu.*

4. Dilemmas Arising from the Administration and the Discontinued P3N

Over the last few years, the phrase *Paradigma Baru* (a new paradigm) has increasingly become the buzz word circulating among the

[45] PMA No. 34/2016 *tentang Organisasi dan Tata Kerja Kantor Urusan Agama Kecamatan* (on the Organization and the Working Procedures of the Sub-district KUA).

[46] See Peraturan Menteri Pendayagunaan Aparatur Negara (The Decree of the Minister for the Efficient Running of the Civil Service) No. PER/62 /M.PAN/6/2005 *tentang Jabatan Fungsional Penghulu dan Angka Kreditnya* (on the Functional Position of *Penghulu* and Their Credit Points).

functionaries of the KUA. This jargon appeared as a headline in the magazine published by the Directorate-General for Islamic Guidance (*Direktorat Jenderal Bimbingan Masyarakat Islam*, *Dirjen Bimas Islam*), the centralized mother organization of the KUA, in 2014. An article in the magazine emphasizes that the bureaucracy running the KUA needed to reform its way of thinking and its attitudes if it were to provide excellent public service.[47] This nub of this problem had to do with the complexities surrounding the informal administration fee traditionally received by KUA marriage registrars which was later defined as an illegal charge (*pungutan liar*) or gratification. This illegal charge was the reason that the KUA found itself stereotyped as a corrupt institution.

The upshot has been that a row has broken out about one of the fundamental issues to do with marriage registration, the administrative fee. In the colonial period, we have seen that *penghulu* were also confronted with financial predicaments. The 1882 Regulation concerning the Priest Councils in Java and Madura was issued for the very purpose of controlling the informal fees received by *penghulu* by stipulating that they be paid a salary. The fly in the ointment in the Regulation stipulated that only the chief *penghulu* would be salaried, while other *penghulu* were not. Unsurprisingly, the absence of a provision pertaining to *penghulu* salaries meant that the regulation was ineffectual[48] and the *penghulu* remained dependent on legal fees (*ongkos perkara*). This income was administered as a mosque fund (*kas masjid*).[49] In practice the chief *penghulu* circulated a certain portion of *zakat* (alms fund) not only to religious officials and the people legally eligible to receive *zakat* (*mustahiq*), but also as a present to the *Bupati.* Sometimes this generosity was even extended the distribution to European officials.[50] The 1929 Marriage Ordinance,

[47] Thobib Al-Asyhar, 'Wajah Baru KUA: Profesional, Berintegritas, dan Akuntabel', *Bimas Islam* (Jakarta, 2014).
[48] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 36; Lev, *Islamic Courts in Indonesia: A Study in the Political Bases of Legal Institutions*, p. 14.
[49] Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942*, p. 62.
[50] *Ibid.*, p. 116.

Article 1 (5) laid down that *penghulu* could set discretionary fees of varying amounts on the basis of the degree of solvency of the families concerned. Later, at the time of the introduction the *penghulu-gerecht* (*penghulu* courts) replaced the *raad agama* (religious court) in 1931, the colonial government tried ensure that court officials were salaried. However, this intention was never implemented as the government budget was in a lamentable state as the consequence of the severe economic crisis in the 1930s.[51] Only from 1934, did *penghulu* begin to be paid allowances, but not salaries.

Among its other objectives the 1946 Muslim Marriage Law was intended to restructure the organization of *penghulu*. The general elucidation on the law clearly states that preceding Dutch regulations did not guarantee marriage registrars (*penghulu*) a salary since their income was dependent on the fees they received from the marital couples' families. This gave rise to the concern that they were not executing their task in a proper manner, not to mention to the possibility that they might be lining their own pockets on the side. The whole matter was complicated even further because this fee (*ipekah*) was also considered to be religiously unlawful (*haram*) by certain Muslim groups. In its efforts to resolve the impasse, the government tried to tighten its grip on the marriage registrars by paying them a salary. However, this did not eradicate the problem because, despite their official position as P3NTR, the *modin* remained unsalaried.

In the mid-1950s, the problem had shifted from the provision of a salary for *penghulu* to the difference in the fee charged for a marriage ceremony in the office and a marriage conducted outside the office (*bedolan*). To officiate at the latter, the *penghulu* had to attend a marriage ceremony held, for instance, at the bride's house. They charged extra for this, but there was no specific regulation which could ensure a degree of uniformity in this matter. In Circular *(surat edaran*) No. 2/B/1954 issued by the Jakarta Office of Religious Affairs in 1954,[52] *bedolan* featured as an important issue with regard to the legal

[51] *Ibid.*, p. 163.

[52] *Surat Edaran Jawaban Urusan Agama Jakarta* No. 21/B/1954 *soal Bedolan* (Circular from the Jakarta Office of Religious Affairs no. 21/B/1954 re *bedolan*)

status of the sum they received from the bride's families. Rather puzzlingly, the Circular seems to justify this extra charge. It emphasizes that *penghulu* in big cities were likely to receive a significant amount of money, whereas their counterparts in small towns and rural areas would enjoy smaller amounts of money.

Ever since, the *bedolan* fee has been subject to debate and conflicting legal norms. Each region has its own approach to dealing with this matter. Numerous regencies use local regulations issued by the Regent to legalize the practice of charging an additional fee in calculations of the *bedolan*. The MoRA turned a blind eye to this variation in the fee. The government regulation only mentions that an administration fee of Rp. 30,000 is charged, irrespective of where a marriage ceremony was conducted.[53] For some decades, the additional fee has been the norm in society. Many people believe that the *penghulu* deserve the fees because of their important role in a marriage ceremony.

For example, in Sidoarjo, East Java, in 2003 the *Bupati* issued a decree concerning the adjustment (*penyesuaian*) of the *bedolan* fee and the honorarium for the P3N (*Pembantu Pegawai Pencatat Nikah* or Assistant to the Marriage Registrar).[54] The letter referred to a higher regulation, namely: the decision made by the Governor of East Java province which approved the *bedolan* fee and the honorarium for the P3N.[55] The Regent of Sidoarjo's decree stipulated that the administration fee for marriage outside the office in working hours was Rp. 180,000, differing considerably from that in the government regulation. This Regent's regulation demonstrates that the

[53] *Peraturan Pemerintah* (the Government Regulation) No. 51/2000 *tentang Tarif atas Jenis Penerimaan Negara Bukan Pajak yang berlaku pada Departemen Agama* (on the Non-tax Revenue of the MoRA).

[54] *Keputusan Bupati Sidoarjo* (Decree of the Regentof Sidoarjo) No. 29/2003 *tentang Penyesuaian Biaya Nikah Bedolan dan Honorarium Pembantu Pegawai Pencatat Nikah (P3N*) Kabupaten Sidoarjo (on the Synchronization of the *Bedolan* Fee and the Honorarium of P3N in Sidoarjo).

[55] *Surat Gubemur Jawa Timur* (Letter of the Governor of East Java) No. 45113267/02112002 *tentang Permohonan Persetujuan Penyesuaian Besarnya Biaya Nikah Bedolan dan Honorarium Pembantu Pegawai Pencatat Nikah (P3N*) (In Response to the Request for an Adjustment to the *Bedolan* Fee and the Honorarium of P3N).

administration fee for an Islamic marriage has become a matter of concern not only to the MoRA District Office (*Kantor Kementerian Agama Kabupaten)* but also the local government. Moreover, the regulation orders the head of the MoRA district office to supervise the implementation of this regulation, even though he and his office fall under the aegis of MoRA and not under that of the Regent.

In response to the confusion caused by these different local regulations, the Minister of Religious Affairs issued Letter of Instruction No. 2/2004 on the improvements to the marriage service. The instruction emphasizes the fixed charge for a *bedolan* fee of Rp. 30,000 and strongly prohibited *penghulu* to charge an administrative cost exceeding this; in a nutshell advising them not to apply the local regulations.[56] Moreover, the central government also issued Regulation No. 47/2004. Although this replaced the previous Regulation No. 51/2000, it brought no changes in its wake. The Regulation still stipulated one tariff, Rp. 30,000, as the administration fee, irrespective of the variety of places in which a marriage ceremony (*akad nikah*) might be held. Heeding these regulations, the Regent of Sidoarjo's finally amended the 2003 local regulation in 2008.

Another variation on the *bedolan* fee was applied in the West Javanese regency of Subang. The Regent issued Regional Regulation No. 22/2006[57] whose purpose was to facilitate the carrying out of a marriage ceremony in society. It not only set the amount of *bedolan*, but specified the detailed allocation of the fee. It states that the *bedolan* fee, Rp. 250,000, already included the official fee, Rp. 30,000. Nearly half of the fee was given to the KUA to cover its various requirements (*penghulu*, *modin*, marriage preparation course and other things), while around 34 percent of the fee was distributed to the Regency Office of Religious Affairs. Interestingly, the local administration also enjoyed 10 percent of the fee. These regulations show that the *bedolan*

[A] *Instruksi Menteri Agama* (Instruction of the Minister of Religious Affairs) No. 2/2004 *tentang eningkatan Pelayanan Pernikahan Pada Kantor Urusan Agama Kecamatan* (on the Improvement of Service in Sub-district KUA).

[57] *Peraturan Daerah Kabupaten Subang* (Local Regulation Subang) No. 22/2006 *tentang Biaya Pencatatan Nikah Bedolan* (on the *Bedolan* Fee)

has become a serious issue among *penghulu* but, so far, there has been no specific regulation to amend the issue. Therefore, several regional governments have taken steps to deal with the matter in response to the conditions in their local areas.

Despite its awareness of the difficulties arising from the *bedolan* fee, the MoRA still acknowledges its existence, as shown by PMA no. 11/2007 which serves as the present most fundamental basis for the setting in train the procedures for marriage registration. Article 21 Point (1) in this PMA asserts that a marriage ceremony should be held in the KUA office. Interestingly, Point (2) stipulates that, considering a request from the bride and with the PPN's consent, a marriage can be held outside the KUA office. By this point, despite the absence of the national regulation and the abolition of local regulations pertaining to the *bedolan* fee, *penghulu* cannot reject any proposal for paying *bedolan* as it is allowed by the regulation. Accordingly, the statistics from the Directorate of Islamic Affairs indicate that the comparison between *nikah bedolan* and *nikah kantor* in the course of the first half of 2007 was 981,536 (82%) for *nikah bedolan* and 221,367 (18%) for *nikah kantor*.[58] The unresolved problem of the *bedolan* fee has left the *penghulu* on the horns of a dilemma.

This issue came to a head when the police arrested a *penghulu*, Romli, in Kediri, East Java. He was prosecuted by the attorney of Kediri municipality for receiving money as *bedolan* and sentenced to one year's imprisonment and a fine of Rp. 50,000,000. It appeared that Romli had asked his financial administrator to record every single informal fee from the brides' families and this document was deemed to be admissible evidence which the attorney could submit to the court when bringing a charge of extortion against him. He was found guilty of charging a fee which differentiated between *nikah bedolan* and *nikah kantor*. The cost of the former was 225,000 and that of the latter 175,000. Romli received Rp. 50,000, regarded as the transfer cost, of each *bedolan* fee and Rp. 10,000 from every single marriage ceremony.

[58] Departemen Agama RI, *Bimas Islam dalam Angka 2007* (Jakarta: Direktorat Jenderal Bimbingan Masyarakat Islam, 2007), p. 24.

Some portion of the fee was used to pay the salary of non-tenured administrators in the KUA and was also deposited with the marriage section at the District Office of Religious Affairs. I was informed that this regular deposit enabled the district office to pay allowances to P3N. Romli was prosecuted under Article 11 of the Law on Bribery and Corruption of 2001. The informal fee was officially defined as an unlawful gratification.[59] The Article states that a state official is subject to 5-year term of imprisonment or a fine ranging from 50 to 250 million rupiahs, if he/she receives a gratification as a consequence of his/her position.[60] The judges decided that Romli was had been proved guilty. The decision found in favour of the attorney's prosecution, sentencing Romli to one year's imprisonment and a fine of Rp. 50,000,000.

In mid-December 2017, I talked to Samsu Thohari, the head of a KUA in Surabaya who was the co-ordinator of the Forum of Kepala KUA of East Java. The forum was established after the Romli case had been filed with the court of Surabaya. Samsu Thohari argued that Romli had been acting carefully and in good faith and should never have been prosecuted. Thohari and his colleagues perceived Romli's case as a kind of criminalization of *penghulu* and condemned the central Ministry for ignoring the situations on the ground with which *penghulu* were confronted.[61] They protested against the legal process by a mass strike rejecting the conclusion of a *bedolan* marriage involving *penghulu* throughout the province. In a pointed protest, they only solemnized marriages held in the office during the working hours.

[59] https://news.okezone.com/read/2013/12/18/337/914034/kpk-amplop-penghulu-masuk-kategori-gratifikasih

[60] The decision of Surabaya General Court No. 104/Pid.Sus/2013/PN.Sby.

[61] Interview with Samsu Thohari, 10 December, 2017.

Figure 2.3: *Penghulu* strike demanding the release of Romli[62]

Thohari argued that Romli's gratification case should be understood in the framework of the central government's attempts to achieve good governance in the MoRA. In mid-2012, the MoRA was shaken by a corruption case arising from a project to print the Qur'an (*pengadaan Al-Qur'an*). In the same year, M. Yasin, the ex-deputy-head of the Commission for the Eradication of Corruption (*Komisi Pemberantasan Korupsi*, KPK) was appointed Inspector-General of the MoRA. He later became an icon of the corruption eradication movement in all the working units under the MoRA. The KUA, as the MoRA frontline public service institution, emerged as a major concern in the hoary practice of charging informal fees. In 2014, the KPK designated the MoRA one of the 'red-report' (*rapor merah*) Ministries on account of the lack of integrity of its functionaries.[63]

A few years prior to the allegations against Romli, the MoRA attempted to reduce the practice of informal fees, whose roots the MoRA assumed had to do with the intermediary roles played by P3N.[64]

[62] This picture was taken from https://m.kbr.id/media/?size=810x450&filename=/archive/2013/12/16/pengulubesar.jpg
[63] https://tirto.id/biaya-nikah-dan-rapor-merah-kua-bGz3
[64] As the effort, the Director General of Bimas Islam issued the Circular letter No DJ.II.I/3/HK.007/2757/2013 on the prohibition of collecting informal fees in marriage registration.

As I explained earlier, a P3N is a *modin* who has been authorized by the state to assist *penghulu* in marriage affairs. The fly in the ointment is that, despite the official position of P3N, they are not officially salaried. Although it was said that they receive allowances once every three months, when push came to shove, the local government allocated their allowances from the informal fees collected by the KUA. In its attempt to get on top of the problem, the MoRA reformed the position of P3N. This reform was initiated in 2009, on the basis of Instruction of the Director General of Bimas Islam DJ.II/113/2009.[65] The Instruction orders the District Office of Religion not to extend the contract of P3N or to make any new appointments unless they are really needed. Rather than use an intermediary, the MoRA suggested people come directly to the KUA, with the marriage documents they have prepared themselves, without involving a *modin*. The subsequent policy statement issued in 2015[66] defined the boundaries of 'needed'. It only applies to remote areas. This policy was met with a wave of rejections in numerous areas. In Palembang, South Sumatra, for instance, P3N requested a hearing in the local Parliament to secure their position.

Returning to the Romli case, the heart of the problem is that the role of a *penghulu* is critical in the administration of a marriage. A *penghulu* is, referring to Lipsky, a frontline worker who interacts directly with citizens, a street-level bureaucrat.[67] Hence a *penghulu* is an essential link between the government and the people. In coping with everyday marriage administration, *penghulu* is challenged by the many and various traditions which are part and parcel of any society. Quite often a *penghulu* receives a fee to which he is not entitled but which seem perfectly legitimate given the extra work he has been required to do. We learn from Lipsky that as, a civil servant, a *penghulu* might have to work in situations which often require responses to the human dimensions of a situation.[68] If dedicated to his job, he might

[65] Instruction of the Director General of Bimas Islam DJ.II/113/2009 (10 February 2009) on the use of non-tax revenue funds and the reorganization of P3N.
[66] Instruction of the Director General of Bimas Islam DJ. II/1/2015 on the promotion of P3N.
[67] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, p. 3.
[68] *Ibid.*, p. 15.

give his clients his individualized and thorough attention. As the man-on-the-spot, he feels that he is best equipped to deal with local situations and, when the central government attempts to change the *status quo*, he often tries to resist this intervention.

Likewise, in Sumbersari society in which I was doing my fieldwork, it seems that the abolition of the position of P3N had no effect whatsoever on the practices of *modin*. Fighting to uphold their position, the *modin* have set up an association (*paguyuban*) called Samawa. Every month they meet in each other's houses. Sometime in January 2017, I attended one of their meetings. Although it was an informal gathering, it was spilling over with religious agenda. A recitation of *tahlil* (prayers to remember the dead) opened the meeting. A number of issues came up in a discussion session afterwards. One was *wali* (guardianship). Haji Hamim, co-ordinator of this *paguyuban*, argued that guardianship continued to cause problems in society because, in fact, official documents cannot always be guaranteed to contain valid data about a citizen, especially in the matter of the biological relationship between a father and his daughter.

Moreover, Haji Mustofa's opening statement implied that people actually involve them on the basis of their position as *modin* rather than as P3N. He also emphasized that it would be almost impossible for the government to monopolize the administration of marriage as long as the civil administration on the level of local society is not properly organized. Besides performing his religious duties, at the very least a *modin* plays an important role in verifying the biological relationship between the bride and the marriage guardian. In particular cases, as I discovered in my fieldwork, neither a birth certificate nor a family card can be taken as a proper guarantee of the actual the relationship between biological parents and the child. In a nutshell, having to depend solely on a document which might happen to contain incorrect data opens plenty of room for conflict and requires extensive local knowledge.

For example, on one occasion a bride registered a man, Pak Ahmad, as her marriage guardian. A neighbouring villager dropped a

hint that the *modin* should double check who could serve as the guardian in her marriage because Pak Ahmad was, in fact, not the biological father of the bride, even though on the family card Pak Ahmad is listed as her father. This raised the problem that, according to Islamic law, a foster father is not entitled to act as a marriage guardian. The *modin* told Pak Ahmad that he could not take the role of guardian for his adopted child. Upset Pak Ahmad rejected the *modin*'s assertion as had always treated the bride as his own daughter. The *modin* tried to convince Pak Ahmad of the conditions required for a marriage according to Islamic law, but the latter refused to budge. The *modin* understood that he had to manage this matter carefully with a good deal of discretion, assuming that, if the biological father knew about the situation, he would confront Pak Ahmad.

In Sumbersari, rarely does a father give the bride in marriage himself. Most of the time, the father delegates his authority to a respected religious leader (*kyai*). The *modin* did not force Pak Ahmad to relinquish his wish but tactfully took Pak Ahmad to visit the *kyai* whom he personally preferred so that the former could delegate his rights (*tawkil wali*). Hence the matter seemed to have been resolved satisfactorily and a couple of days later, when the *modin* met the bride's biological father, again exercising his discretion, he invited him to visit the same *kyai* to do the same thing. The result was that, on the day of *akad nikah*, the *kyai* assumed the role of guardian and neither Pak Ahmad nor the father played any formal part.

This experience goes a long way to underline that Muslim marriage registration is much more than simply an administrative affair. It has wider dimensions, both religious and social. Because of these ramifications, a *modin*, the man-on-the-spot, remains a vital actor. The story I have just told shows very clearly that, in contrast to the limited capacity of the state, the *modin* played an important role in mediating the different interests in society. Firstly, he certainly assisted the *penghulu* in the latter's main task, that is to ensure that a marriage ceremony was conducted in accordance with Islamic rules. Secondly, he was successful in preventing potential tension between Pak Ahmad and the father.

5. Official Fees and NIK

Back to Romli, his imprisonment and the strike of his fellow *penghulu*, have become an important step on the road to further reform. An important figure in the section of the MoRA dealing with *penghulu*, Anwar Saadi, told me that, through its failure to live up to its responsibility, the government was ignoring the interests of *penghulu* and neglecting Muslim affairs in general.[69] Adding his weight to the discussion, Suryadharma Ali, the incumbent Minister, argued that people perceive the marriage ceremony to be a sacred event. They prefer to conduct it at home and it is common for people to give voluntary gifts to their *kyai* or *penghulu* for performing their religious roles in a marriage ceremony.

The first proposal the MoRA made was an additional budget to replace the informal fee received by *penghulu*. This proposal was not approved by the government. Instead, the government encouraged the MoRA to keep the people involved in the financial costs of marriage registration. From the outset, the government had been adamant that marriage registration can never be free of charge.[70] Under the supervision of the Co-ordinating Ministry for Human Development and Cultural Affairs, the government prepared a new regulation to accommodate its preference. According to Anwar Saadi, the MoRA actually proposed a number of categories of administration fees. Firstly, those who want a marriage ceremony performed at the KUA office would have to pay Rp. 50,000. Secondly, those who wished to have an-outside-office marriage ceremony have to pay Rp. 400,000. Thirdly, if the marriage ceremony was held on hired premises (*gedung*), the couple's family would have to pay even more. This initial proposal was rejected as too complicated and the proposal was simplified into two categories of fees. The first category remained the

[69] Interview with Anwar Saadi, 13 December 2017.

[70] http://www.tribunnews.com/nasional/2014/02/07/menkokesra-biaya-nikah-harus-tetap-ada

same, while the second and the third were fused into one with one charge, Rp. 600,000.

The KPK, the Parliament and the Ministry of Home Affairs then exerted pressure on the MoRA to change the first category by eliminating the fee altogether. Their argument was premised on UU No. 23/2006 on Civil Administration (*administrasi kependudukan*). The law merely stipulates that all Muslim citizens who conclude a marriage ceremony must report it to the sub-district KUA within 60 days. According to the law, a marriage ceremony is considered to constitute one of the 'crucial life moments' (*peristiwa penting*) to which the legal obligation of registration is applied.[71] Furthermore, Article 79A of the UU No. 24/2013, a revision of the previous UU No. 23/2006 on Civil Administration, states that "all matters as the consequence of the publication of civil documents (*dokumen kependudukan*) are free of charge". With regard to these provisions, marriage certificate issued by the KUA is taken to be one of these civil documents (*dokumen kependudukan*) to which a citizen has an inalienable right. Muslim marriage registration is treated the same as common civil registration which applies no charge.

This has stirred up a considerable debate among KUA officials.[72] Most of them tend to argue that a Muslim marriage certificate (*akte nikah*) is not the equivalent of a *dokumen kependudukan*. The reason is twofold. Firstly, the official definition of *dokumen kependudukan* in UU No. 23/2006 refers specifically to documents of civil registration (*pencatatan sipil*), which does not necessarily include marriage registration. Secondly, there is still a dichotomy between registration of Muslim and non-Muslim marriages which has led to different procedures being applied. In contrast to the civil administration office, the KUA has the jurisdiction not solely to register a marriage ceremony but, more fundamentally, to ensure that it has complied with Islamic

[71] The Law 23/2006 on Civil Administration (*administrasi kependudukan*).

[72] This idea was, for instance, expressed by a *penghulu* in West Java, arguing that the management of administration fee should be decentralized because of the variety of conditions in each region. See http://kuagunungjati.blogspot.com/2015/06/analisa-biaya-nikah-berdimensi-ruang.html

rules. Anwar Saadi confessed that the MoRA failed to negotiate the KUA officials' interests effectively in the meeting with different elements in the government.

To ensure the proper administer of the civil administration and public service, the central government issued Governmental Regulation No. 48/ 2014 which accommodates the last option. Article 6 states that every citizen who performs a marriage or brings about a reconciliation inside or outside the KUA office should not charge a registration fee. If a marriage ceremony is held outside the KUA office, the bride's family is obliged to pay an amount of Rp 600,000 as an honorarium and transport costs as part of the revenue of the KUA.[73] The implementation of two types of fees is not without complexities. People pragmatically strategize these fees in order to suit their own interests. I shall try to delve more deeply into this issue in Chapter 5.

Besides introducing this administration fee reform, the MoRA has also urged the KUA to improve its administrative system. In 2013, the MoRA introduced a computer-based system of marriage registration (*Sistem Informasi Manajemen Pernikahan*, SIMKAH). This programme was launched in tandem with the application of the single identification number (*Nomor Induk Kependudukan*, NIK), introduced by the government in 2009.[74] This is also known as the electronic identity card (e-KTP). The SIMKAH uses the NIK as the main parameter by which to examine the validity of a person's private details. During the first years of its operation, however, the SIMKAH did not link up with the NIK database stored by the MoHA. Nevertheless, it was already able to prevent any inaccurate scrutiny of the age of the bride. It was only at the end of 2015 that numerous regencies initiated integration of the local civil administration database with the SIMKAH database managed by the KUA. This was an outcome of the regulation issued by the Minister of MoHA which

[73] See Article 6 PP No. 48/2014 on the non-tax income of the MoRA.

[74] *Peraturan Presiden* (the Presidential Regulation) 26/2009 *Tentang Penerapan Kartu Tanda Penduduk Berbasis Nomor Induk Kependudukan Secara Nasional* (on the implementation of the identity card on the basis of a national identity number).

allows its civil registration bureaus to give the civil administration data access to relevant government institutions, including the KUA.

This co-operative model was later expanded on an even greater scale. At the end of 2017, the MoRA and the MoHA officially signed a co-operation accord which ushered in the use of e-KTP in marriage registration nationwide. E-KTP has now become a compulsory document in marriage registration. The MoHA now authorizes the KUA of the MoRA throughout Indonesia to access civil documents and to validate NIK stored in the administrative system run by the Bureau of Civil Administration. Conversely, the MoHA is also entitled to access data on marriage registration managed by the MoRA. Of course, according to Anwar Saadi, the implementation of the use of e-KTP is subject to the readiness of each KUA to undertake this task.[75]

That said, the integration of marriage registration into the civil administration has had important consequences. Firstly, because nowadays the KUA obliges them to submit an electronic identity card (e-KTP), it is no longer possible for both the brides and grooms to fiddle their ages using the legal proof issued by the village head. A bride who is legally eligible to register a marriage (16 years and older) but does not yet possess an identity card can no longer get away with just handing in a declaration from the village office. Rather, she has to submit a letter from the local civil administration bureau declaring that the NIK has been verified and the identity card is being processed. This procedure means there is no longer any room for backdating birthdates (*menuakan usia*) when applying to register a marriage.

[75] *Pencatatan Nikah Hanya Menggunakan KTP Elektronik*, https://bimasislam.kemenag.go.id/post/berita/pencatatan-nikah-hanya-menggunakan-ktp-elektronik, accessed 15 Mar 2019.

PEMERINTAH KABUPATEN PASURUAN
DINAS KEPENDUDUKAN DAN PENCATATAN SIPIL
Komplek Perkantoran Kabupaten Pasuruan, Jl. Raya Raci KM-9 Telp. (0343) 741919
BANGIL - PASURUAN

SURAT KETERANGAN
Nomor : 475/04586/424.066/2017

Yang bertanda tangan dibawah ini adalah :

Nama : Drs. SUNYONO, MM
NIP : 196002211981011003
Jabatan : Kepala Dinas Kependudukan dan Pencatatan Sipil Kabupaten Pasuruan
Alamat : Komplek Perkantoran Kabupaten Pasuruan, Jl. Raya Raci KM.9 Bangil - Pasuruan

Menerangkan bahwa :

: [redacted]
NIK : FITRIA
Nama : PASURUAN / 01-01-2000
Tempat/Tanggal Lahir : PEREMPUAN
Jenis Kelamin : [redacted]
Alamat
RT/RW : 001 / 001
Kel./Desa : [redacted]
Kecamatan : [redacted]
Agama : Islam
Status Perkawinan : Belum Kawin
Pekerjaan : Belum/Tidak Bekerja
Kewarganegaraan : WNI

Penduduk tersebut diatas benar-benar sudah melakukan perekaman KTP-el dan penduduk yang bersangkutan telah terdata dalam Database Kependudukan Kabupaten Pasuruan.

Demikian surat keterangan ini kami buat sebagai pengganti KTP-el, dipergunakan untuk kepentingan Pemilu, Pemilukada, Pilkades, Perbankan, Imigrasi, Kepolisian, Asuransi, BPJS, Pernikahan dan lain-lain, dan kepada yang berkepentingan agar menjadi maklum.

Surat Keterangan ini berlaku selama 6 (enam) bulan sejak diterbitkan.

Pasuruan, 17 January 2017

KEPALA DINAS KEPENDUDUKAN DAN
PENCATATAN SIPIL KABUPATEN PASURUAN

Drs. SUNYONO, MM
Pembina Utama Muda
NIP. 196002211981011003

Figure 2.4. Letter from the local bureau of civil administration, substituting identity cards

Secondly, when the bride is not legally allowed to register her marriage, primarily because her age is under 16 on the day of the marriage ceremony, the *modin* usually marry a couple informally for social reasons and postpones the registration. This means that one consequence of the modernization of the marriage registration system

is an increasing number of unregistered marriages and this problem still exists. My observations in a village in Sumbersari sub-district show that in six out of forty-five marriages during the year 2017, the registration was delayed because of the bride's age. On a more positive note, this delay in registration also suggests that people are actually tending to register their marriage despite their limited legal literacy.

Villagers are less daunted and it seems that marriage registration is easier and more negotiable. The great advantage is that the *modin* always find pragmatic solutions to different problems even though it seems that the implementation of the NIK has obviously failed in its goal of reducing births out of wedlock and eliminating underage marriage. Putting something on the statute books is not always cut and dried. The implementation is not as simple as it sounds. In a follow-up to the integration of the civil administration and marriage registration through the SIMKAH, the MoRA introduced a marriage card (*kartu nikah*) in November 2018 and stipulated in the newest regulation on marriage registration, PMA No. 20/2019. The Minister of Religions argued that the card is the yet another offshoot of the SIMKAH. The card works like an identity card. The MoRA is keen to stress that the card is handy and can be used in multiple instances as a substitute for a marriage certificate. As it is equipped with a barcode, it is believed that the card will be able to eliminate the forgery of a marriage certificate.

6. Conclusion

In Indonesia, the administration of Muslim marriages in the KUA can be considered to be a real step in the direction of the bureaucratization of Islam. The bureaucratization of Islam refers to the process by which the state co-opts religion and centralizes Islamic religious authority within its own institutions.[76] We see how state actors are empowering state-funded administrative bodies to shape Islamic discourses and

[76] Ann Marie Wainscott, *Bureaucratizing Islam: Morocco and the War on Terror* (Cambridge: Cambridge University Press, 2017), p. 14; Müller, *The Bureaucratization of Islam and its Socio-Legal Dimensions in Southeast Asia: conceptual contours of a research project*, p. 2.

regulate religious matters in the public sphere. The KUA is the MoRA's frontline agency to deal with these matters. However, for a number of years, as long as the KUA has existed, problems related to the position and the rights of formal and informal marriage functionaries as well as the administrative system have required considerable adjustment if they are to function adequately.

Although the MoRA has been committed to performing a series of bureaucratic reforms of the KUA, it has not yet freed the latter from its invidious position. In its dealings with marriage, it has to manage both the religious and the administrative aspects of Muslim marriages and herein lies its dilemma. To perform the former duty, it is supposed to exercise traditional religious authority, while for the latter it has to function as a modern administrative bureau. In other words, the KUA is a religious bureaucracy, yet must perform as a public service office on the other. The tension between the religious and the administrative aspects has generated significant complexities which have dogged it right up to the present.

In order to sift out some of these complexities, the MoRA has attempted a series of reforms of the KUA over the last few years. These reforms have been introduced into numerous fields and include administrative fees, the positions of *penghulu* and *modin* and their competences and the administrative system itself. Despite the solutions the reforms have offered, they have brought a number of problems in their wake. It seems as one problem is solved, another one arises.

The first problem is related to the administrative fees and the position of the *penghulu*. The position of *penghulu* has always been a thorn in the side of the Ministry ever since early years after Indonesian Independence. One of the most persistent problems with which *penghulu* have been confronted is the issue of the administrative fee for the marriage ceremony which has led to the problem of alleged unlawful gratification. The lack of a specific legal procedure to regulate the payment of the administrative fee for a marriage ceremony outside the office (*bedolan*) even led to the prosecution of a *penghulu* in Kediri, East Java, in 2013. Therefore, the MoRA has introduced various

bureaucratic reforms to cope with this crisis. Among the decisions it has taken, the MoRA has made marriage registration free of charge. This policy was influenced by the law of civil administration which positioned marriage registration as a civil registration. The law stipulates that each citizen has the right to obtain a *dokumen kependudukan* (civil document) free of charge. Because marriage certificates are deemed to be the equivalent to other civil documents, Muslim marriage registration accordingly should cost nothing. Only people who wish to conclude *bedolan* are expected to pay extra to cover the costs incurred by the *penghulu*. This reform has meant that the KUA officials apparently tended to identify themselves as civil registration rather than religious officials. In fact, the KUA has a religion-based jurisdiction, namely: to supervise whether a marriage ceremony complies with Islamic doctrines and it seems that the MoRA is still exigent about securing the religious nature of the KUA. It achieved this by restoring the position of *penghulu* at the epicentre of the KUA. Now turns out that only a *penghulu* can serve as the head of the KUA (the PPN).

The second reform has occurred in two interconnected areas: the affirmation of the PPN as the only agency for marriage registration and the termination of the function of village religious officials (*modin*) as the P3N. The government argues that the practice of *modin* sails close to the wind of corruption. However, I argue that the issue has to do with the uncertain legal status of the P3N which means the government is disobliged to pay them a salary. In practice, it is hard to implement this reform in society. In certain rural Muslim communities, Islamic marriage is a religious ceremony which necessitates the authority of informal religious leaders such as *kyai* or *modin* far more than the formal authorities such as *penghulu* or the PPN. In their everyday practice, the *modin* do not concern themselves solely with the administrative matters, but are more involved in the religious sides of marriage. As has been the tradition, people tend to delegate any marriage administration to a *modin* and, by so doing, villagers manage to achieve two goals simultaneously: the sidestepping the administrative rigmarole and satisfying the requirements of religion. From a social point of view, the loss of their

legal status as P3N does not affect their roles as *modin*. As a result, these informal leaders cannot be replaced just like that.

The third kind of reform, integrating marriage registration into the civil administration, seems to have run into the same sorts of problems. The use of the NIK is unquestionably to avoid fraudulent changes in the ages of the couples, yet there is no guarantee that this will stop people's willingness to marry their children under the statutory marriageable age. In cases like this, the intervention of the *modin* remains important. Neither the modern system nor the government officials are likely to be able to handle this situation adroitly. Confronted with a problem like this, a *modin* will come up with a solution. Their most common solution is to perform a religious marriage with a delayed/retroactive registration. Although the religious marriage literally does breach the law, the delay in registration does guarantee the legal status of the couples.

In the next chapters, I leave the discussion on the legal and bureaucratic reform of marriage administration in the KUA and turn my focus instead to look at law in action. I try to build up an understanding of how people deal with the state law and negotiate their interest to comply with it. However, before plunging into this discussion, the following chapter presents the social context of the society in which I have done my research. This is to give a preliminary basis to help understand how Islamic marriage is practised and in what ways traditional social actors play roles.

Part Two

PRACTICE

CHAPTER 3

Pasuruan: Islam and Other Contexts

1. Introduction

This thesis deals with the reform of the bureaucracy concerned with marriage and how it has affected the everyday legal practice of marriage in a rural society. It includes an analysis of the local practices and lived experiences of marriage in a Muslim community in a regency in the northeastern part of the province of East Java: Pasuruan. This chapter offers an introduction which will assist in understanding the socio-economic history, the religious and cultural life and the development of Islam in Pasuruan. It consists of three sections. It first sets the scene by delineating the historical development of Pasuruan, including the history of Madurese migration and the historical development of Islam. Secondly, it addresses current cultural, religious and political life. The last section centres on specific elements of the community in which I did my fieldwork.

2. Historical Context

According to the *Encyclopaedie van Nederlandsch-Indië*, the name Pasuruan derives from the Javanese word *surόh* which means betel. The *Encyclopaedie* mentions the *kromo* (high) Javanese equivalent of the name, which is *pasedahan*, from the root *sedah* which also means

betel.[1] However, this name has gone out of use and the fact that Pasuruan was once a place where the betel (areca) palm grew in abundance has long since faded from people's memories. The alternative name of Pasuruan, Gembong (the name of a river dividing the town), which was used by many Javanese in the past is also no longer used.

The district of Pasuruan is located around 65 kilometres south-east of Surabaya, the capital city of the province. Today Pasuruan is home to 1,501,798 Muslim people or 98 percent of the whole population. A group of Hindus, around 15,612 (1%), most of whom live in the southern highlands around the volcano Mount Bromo, constitute the second largest population.[2] Historically, it was not until the Mataram kingdom occupied the southern part of Surabaya in the 1600s that Pasuruan became an important town. After the advent of Mataram, Pasuruan was ruled by regents who were subordinates of the Mataram sultanate in Central Java. The area surrounding Pasuruan was a frontier area of Mataram, especially in view of its close relationship with the "stubborn remnants of Hinduism in the easternmost corner of the island". Elson says it "served both as a field of combat and a redoubt for rebels".[3]

[1] P.A. van der Lith and Joh. F. Snelleman, *Encyclopaedie van Nederlandsch-Indië*, vol. 3 edition (Amsterdam: KIT Royal Tropical Institute, 2010), p. 233.
[2] BPS Kab. Pasuruan, *Kabupaten Pasuruan dalam Angka 2016* (Pasuruan: BPS Kab. Pasuruan, 2017).
[3] R.E. Elson, 'Sugar and Peasants: The Social Impact of the Western Sugar Industry on the Peasantry of the Pasuruan Area, East Java, from the Cultivation System to the Great Depression' (Monash University, 1979).

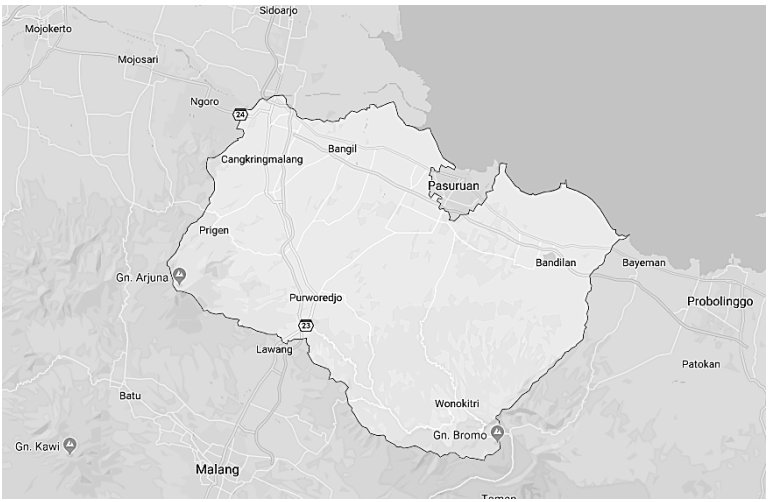


Figure 3.1. Map of Pasuruan

This section elucidates the history of Pasuruan, including the arrival of Madurese migrants, the socio-economic situation in the colonial period and the development of Islam, rounding off with the changes which occurred after the Proclamation of Independence and under the New Order era.

2.1. Madurese Out-Migration to Pasuruan

Pasuruan, and this is generally true of other areas located in the Eastern Salient of Java (*tapal kuda*), is home to people of Madurese descent. The historical ties between Madura and Pasuruan go back a long way to the thirteenth century, when Raden Wijaya, the founder of the Majapahit kingdom, agreed to grant Wiraraja, the Regent of Madura, the Eastern Salient of Java in gratitude for his support of the kingdom. Nevertheless, earlier literature suggests that both Javanese and Madurese were already conscious of belonging to the same cultural community. Husson categorizes Madurese out-migration to East Java into six chronological orders. He claims that Madurese serfs first went to East Java in the thirteenth and fourteenth centuries, to colonize agricultural land and support the Majapahit kingdom. This

migration was partly the result of geographical factors such as scarcity of good soil, deforestation and erosion in their own island.[4] This marks the first out-migration wave of Madurese to Java.

The second wave of migration took place between the sixteenth and the nineteenth century. At the time, Madura was a source of soldiers for the powers fighting for supremacy in East Java. The military missions stimulated population movements. To take one example, a thousand Madurese were recruited by the VOC for the war against Blambangan in 1741. Madurese soldiers who had been involved in different battles in East Java remained there afterwards. If they did return to Madura, they brought back such glowing stories about the prospects in East Java they motivated other Madurese to move there.[5] The third migration was an exodus of Madurese peasants between 1820 and 1850. During this period, Madura had the status of a free province under the terms of the 1745 agreement between the Regent of West Madura and the VOC which stated that the Regent would be allowed to govern independently in return for an annual contribution of money and troops. This situation continued until the liquidation of the VOC in 1799 when Madura lost its special self-rule status, which had had a severe consequence for the locals. They had to pay crippling taxes and retributions and therefore many left their island to begin a new life in East Java with their families.[6] The emigration disadvantaged the local agriculture in Madura in terms of the decrease in manpower during the planting and harvest seasons. The island was spun into an economic downturn and its dependence on Java became more marked during this period.[7]

As I have mentioned before, the scarcity of good soil in Madura has been an enduring problem and always formed to the barrier to agricultural development. Agricultural harvests in the nineteenth century were far from enough to satisfy local needs. There are

[4] Laurence Husson, 'Eight Centuries of Madurese Migration to East Java', *Asia and Pacific Migration Journal*, vol. 6, no. 1 (1997), p. 79.
[5] *Ibid.*, pp. 81–3.
[6] *Ibid.*, pp. 84–5.
[7] *Ibid.*, p. 85.

references which indicate the widespread use of coolies and seasonal and permanent workers from Madura in East Java, particularly in Pasuruan, Besuki, Jember, Probolinggo, Bondowoso and Lumajang. These areas were the important cash-crop centres of the province. A report shows that in 1892, 40,000 Madurese migrated to East Java. The big demand for workers in East Java really began when the Dutch East Indies government opened a whole series of plantations there between the 1830s and the 1870s. In addition to the very large-scale government project, enterprising individuals also set up their own private plantations. The establishment of these private plantations produced a rapid spurt in Madurese migration. Madura quickly became a reservoir of the manpower which was so vital to this development. For instance, Probolinggo experienced a 5.19 percent population increase in 1854, attributable to the arrival of Madurese. The expansion of the government plantation project and private enterprises meant that the cane-sugar industry of Java was the second largest in the world after Cuba.[8] This seasonal migration marked the fourth wave of migration which took place in the latter part of the nineteenth century. According to Husson,[9] with reference to Weddik, kinship ties meant that migrants from Sampang and Bangkalan chose to reside in Pasuruan. Quoting Van Nes, Elson reveals that, in the 1830s, demographically, Madurese constituted around 35 percent of Pasuruan residents, approximately 170,049 Javanese and 92,463 Madurese.[10]

The fifth round of migration occurred during the Japanese occupation (1942-1945). During this period, Madurese peasants suffered famine and poverty because of the continual worsening of the island's economy, the result of failed harvests and crippling taxation. A very large group of Madurese made their way to East Java on foot, travelling at night to avoid the sun, in their battle to survive seeking to find food and work in Java.[11] The last wave of migration occurred

[8] Ulbe Bosma, 'The Cultivation System (1830-1870) and Its Private Entrepreneurs on Colonial Java', *Journal of Southeast Asian Studies*, vol. 38, no. 2 (2007), pp. 275–91.
[9] Husson, 'Eight centuries of Madurese migration to East Java', p. 86.
[10] *Ibid.*, p. 85.
[11] *Ibid.*, pp. 88–9.

between the 1950s and the 1960s and still continues today. Big cities in East Java have experienced a rapid rate of urbanization as a consequence of natural population increase and migration from rural areas. And it has been the Madurese who have supplied the workforce, labourers and coolies for the plantation around these cities. They have also worked as shopkeepers, run food-stalls (*warung*), become rickshaw-drivers (*tukang becak*) and fruit-sellers. Internal solidarity among Madurese seems to play an important role in the group's economic situation.[12] Interestingly, the migratory influx has led to a more fluid social structure in Pasuruan. The Madurese who have settled there were not really inclined to submit to the pretensions of Javanese aristocrats.[13]

2.2. Colonial Occupation

As I mentioned earlier, a huge wave of Madurese migrants arrived in Pasuruan during the course of the nineteenth century, when the Dutch East Indies government set up a project encouraging the establishment of plantations and sugar-factories. The Pasuruan area first figured as an important area on the stage of Java's history when, in 1830, Governor-General Van den Bosch decreed that it was part of the Cultivation System. This was a policy introduced by the Dutch government which imposed on the Javanese population the obligation to grow and make compulsory deliveries of coffee, sugar-cane and other export products in exchange for crop payments.[14] The expansion of agricultural commodities required thousands of labourers and coolies. Although the Dutch introduced many commercial crops, the two most successful during the life of the System proved to be coffee and sugar.

[12] *Ibid.*, pp. 90–2.

[13] Robert W. Hefner, *The Political Economy of Mountain Java: An Interpretive History* (Berkeley: University of California Press, 1990), p. 195.

[14] Fasseur Cornelis, 'The Cultivation System and its Impact on the Dutch Colonial Economy and the Indigenous Society in Nineteenth-Century Java', in *Two Colonial Empires. Comparative Studies in Overseas History*, ed. by Bayly C.A. and Kolff D.H.A. (Dordrecht: Springer, 1986), pp. 137–54; Melissa Christina van Bijsterveld, 'Continuation and Change on Dutch Plantations in Indonesia' (Leiden University, 2018).

At the height of the Cultivation System, the labour force mobilized for government enterprises was coerced and their sheer numbers massive.[15] Meanwhile, the number of coffee trees planted grew significantly until eventually 70 percent of all Javanese families were involved in compulsory cultivation and more than half of them worked with coffee. However, the payment for these products was not commensurate with the market value or with the efforts required by the planters. The value of the export product amounted to 11.3 million guilders in 1830 and rose to 66.1 million in 1840.[16] Although, as a consequence of its astonishing profitability, coffee remained a government monopoly longer than any other crop,[17] the northern littoral stretching from Pasuruan to Surabaya became Java's largest sugar-growing region, and would remain so for the duration of the Cultivation System. Hence, it goes without saying, this system had a considerable impact on the economic and social life of the Pasuruan people. Nevertheless, in contrast to areas in Central Java, Pasuruan did not suffer under the Cultivation System.[18] Certainly the cultivation of sugar-cane and the sugar industry offered the native elites of the area prosperity but did not have any considerable impact on the ordinary people.[19]

In terms of the administrative development of the area, the Pasuruan regency was officially inaugurated in 1901. Besides sugar, the regency had centres of forestry and copper-mining. The town of Pasuruan served as the capital of the regency and it was also made the capital of the present-day regencies of Probolinggo, Malang and Lumajang. As time passed, the economic position of the Pasuruan regency declined as the result of various factors. One of the most important was that the Gembong River, which divided the town, gradually silted up.[20] At the precisely same time, the early twentieth

[15] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 45.
[16] Cornelis, 'The Cultivation System and its Impact on the Dutch Colonial Economy and the Indigenous Society in Nineteenth-Century Java'.
[17] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 43.
[18] *Ibid.*
[19] Dédé Oetomo, 'The Chinese of Pasuruan: Their Language and Identity' (Australian National University, 1987).
[20] *Ibid.*, p. 16.

century, Surabaya Harbour was expanded and the Surabaya-Malang railway was opened. The opening of this railway rather undercut the importance of Pasuruan and it slipped into an industrial decline. Much of its trade was diverted to Probolinggo. The capital of residency was transferred to Malang in 1930.[21]

2.3. Pre-Independence

The historical background of orthodox understanding of Islam in the pre-independence era explains the rapid growth of Sarekat Islam (SI, Islamic Union) in Pasuruan[22] and later of the NU. SI was a party which grew out of an association of Muslim merchants who wanted to improve their economic interests to put them more on a par with those of Chinese merchants in Java. It became a political party in the 1920s. Trying to trace the history of SI in Pasuruan is a difficult exercise because of the lack of sources. What is known is that a representative of SI was quite active in his visits to those villages in Pasuruan with which he had personal and financial ties and in them he would set up a village religious leader as a sort of a local organizer. Because of its configuration, SI attracted peasants and quickly became an organization embraced by the peasants in their struggles against the infidel rulers and the *priyayi*, a social class comprising the elites and government officials. This idea of struggling against the rulers and social elites struck a profound chord among traditionalist Muslims. Another reason SI expanded its influence was that it slotted neatly into the wave of Islamic revivalism which swept Java around the 1910s and shared the SI ideals of communal solidarity and belonging.[23]

The development of SI was interrupted by the onset of a severe economic crisis, popularly known as the Great Depression, in Indonesia during the 1930s. Although this Great Depression had a detrimental effect on the Pasuruan economy, it did not change the

[21] *Ibid*.
[22] Harry J. Benda, 'The Pattern of Administrative Reforms in the Closing Years of Dutch Rule in Indonesia', *The Journal of Asian Studies*, vol. 25, no. 4 (1966), p. 592.
[23] Elson, 'Sugar and Peasants: The Social Impact of the Western Sugar Industry on the Peasantry of the Pasuruan Area, East Java, from the Cultivation System to the Great Depression'.

political face of Pasuruan very much. Under this calm surface, the NU quietly began to expand its influence.[24] It pursued a slightly different strategy to that of SI. It adopted a nonconfrontational strategy towards the rulers and, on the ground in the villages, it encouraged rural religious teachers to promote its own style of religious platform. Students in *pesantren* (*santri*) were sent into areas of the countryside to organize *pengajian* (classes in *Qur'an*), thereby laying the groundwork for the establishment of a new chapter of the organization. In short, its strategies were apolitical.[25] Its priorities could be said to have been: do not provoke immediate anticolonial resistance but concentrate on disseminating traditional Islam. By deploying this cautious approach, the NU won the hearts and minds of that section of the population which was a still less 'Islamic', succeeding in spreading its base to the southern highlands, despite the fact that the contest between Islam and Javanism (*kejawen*) in the highlands was still ongoing.[26]

The Dutch colonial rule was powerful enough to curb attempts to establish Indonesian sovereignty but was not strong enough to eliminate the Nationalist spirit. At that point, the Indonesians still did not have the power to compete with the colonial ruler and therefore needed outside help. Beginning in March 1942, the Japanese provided just this help by taking over Dutch power in Indonesia. Sadly, it was a false dawn and Indonesians would soon have to face the reality of the hardship of Japanese rule: a scarcity of food, clothing and medicines as well as forced labour on a large scale. Pasuruan people remembered the Japanese occupation (1942 to 1945) as a difficult and frightening period.[27] The policy the Japanese employed towards Islam was virtually the reverse of that of the Dutch and exploited the old antipathy towards Christian rulers. The Japanese authorities courted religious teachers in the villages and rewarded them by increasing their local power. In a nutshell, the effect of the Japanese policy was to

[24] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 197.
[25] Harry J. Benda, *The Crescent and the Rising Sun: Indonesian Islam under the Japanese Occupation,1942-1945* (Dordrecht: Foris Publications, 1983).
[26] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 197.
[27] Oetomo, 'The Chinese of Pasuruan: Their Language and Identity', p. 14.

expand the growth of the Islamic movement. In return, the Japanese were eager to obtain the aid of these religious leaders in the fight against the return of the former rulers.[28] Moreover, Japanese support was also crucial to the establishment of the *Masyumi*, a federation of all Indonesian Muslim organizations, in which the NU executive played important roles. The NU then became part of the government bureaucracy through its involvement in the *Shumubu*, the Japanese-created Office of Religious Affairs.[29] In the final months of the Japanese occupation, *Hizbullah*, a military arm of the *Masyumi*, launched an intensive campaign to win mass membership in Pasuruan. The resultant success guaranteed Muslim supremacy in lowland Pasuruan.[30] *Hizbullah* was potentially challenged by the establishment of Nationalist youth corps in 1944, Peta (*Pembela Tanah Air*, Defenders of the Homeland). However, Peta failed to obtain a significant influence on the Muslim communities in Pasuruan, which remained a firm NU bastion.

2.4. Post-Independence and the New Order Era

With the Proclamation of Independence in August 1945, the new state of the Republic of Indonesia came into being in the territory of the former Dutch East Indies. However, the dream of an independent Indonesian state was opposed by the former colonial power. At the end of the Second World War, the Dutch asserted their intention of regaining the colony with the support of their European allies. The war of attrition, popularly known by Indonesians as the Revolution, lasted for more than four years.[31] The Dutch organized a military expedition in 1946 but it failed to raise resistance in urban Pasuruan.[32] Nevertheless, in some ways it did encourage a republican movement in the southern part to resist the infiltration of NU influence from the

[28] Benda, *The Crescent and the Rising Sun: Indonesian Islam under the Japanese Occupation,1942-1945*.
[29] *Ibid.*
[30] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 198.
[31] Kevin W. Fogg, 'Islam in Indonesia's Foreign Policy, 1945-1949', *Al-Jami'ah*, vol. 53, no. 2 (2015), p. 308.
[32] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 198.

north. This movement caught the Islam-based organizations in Pasuruan at a disadvantage and led to the establishment of Nationalist dominance in the region following the war. However, greatly assisted by the vast development of *pesantren*, traditionalist Muslims did manage to preserve their entrenched socio-structural power.

A year earlier, in 1945, Indonesia had declared its Independence. Soon after Independence, the government sought to hold a legislative election. But, given the prevailing political instability, the election was not possible. In 1953, the government was able to pass a bill on elections which was enshrined as a law. It gave the right to vote to everybody over the age of eighteen or who was or had been married. The election campaign followed hard on the heels of the passing of the law and the first election was held in September 1955. In this general election, devout Muslims were drawn to the *Masyumi* and NU, whereas Nationalist Javanese chose to pursue their struggle through either PNI (*Partai Nasional Indonesia*, the Indonesian National Party) or PKI (*Partai Komunis Indonesia*, the Communist Party of Indonesia).[33] This division shaped the development of the Islamization in Pasuruan, which was very much bound up in the *aliran* (stream) pattern of party mobilization. Political parties infiltrated rural areas canvassing votes. The NU enjoyed a major success and won a significant number of seats (18.4%) in the Parliament.[34] The *Masyumi* scored an even bigger win, as the runner-up, with 20.9 percent of the votes. Religion featured prominently in the political campaign.

Compared to other areas, the polarization in Pasuruan was relatively simple: split between the NU-dominated northern lowlands and the Nationalist southern highlands, although the influence of the *Masyumi* in Pasuruan was inescapable. The NU was highly critical of the *Masyumi*, disagreeing with its modernist ideology. Nevertheless, the NU and *Masyumi* leaders met on common ground in their ideas about Communism. They identified communists with atheists.

[33] Justus M. van der Kroef, 'Indonesia's First National Election: A Sociological Analysis', *The American Journal of Economics and Sociology*, vol. 16, no. 3 (1957), p. 238.
[34] Robert W. Hefner, 'Islamizing Java? Religion and Politics in Rural East Java', *The Journal of Asian Studies*, vol. 46, no. 3 (1987), p. 550.

Although certain figures in the NU condemned the PKI as an anti-Islamic organization, some NU leaders were less concerned about the communists than about their modernist Muslim rivals.

In Pasuruan where religious issues have always loomed large, Islam has wielded a significant influence. *Masyumi l*eaders and radical *kyai* from the NU demanded that the traditional ritual practices in the highland south be outlawed. Their opposition came to a had prior to the 1955 election when tensions escalated after a group of Muslim activists (linked to radical factions in the NU) occupied a famous upland *dhanyang* (a sacred place). Although overall the Islamic political parties were disappointed with the result of the first election of 1955 on the national level, in Pasuruan itself the election results confirmed the dominance of the NU, which enjoyed a significant win, 61 percent of the votes, in that election. Only Madura produced a more stunning result than Pasuruan.[35] This NU electoral victory in Pasuruan put the Pasuruan's Javanist highlanders in a tricky situation. The election results meant that the major success of the Islam-based political parties posed a serious threat to their religious traditions.

Another development in the wake of the election was the growing influence of the PKI. The economic decline in Indonesia which dogged the late 1950s and early 1960s had a severe impact on inflation. The PKI took the opportunity presented by the deteriorating economic situation to expand its rural constituency. At the end of 1963, the PKI introduced a campaign to make the land reform enacted in 1960 Agrarian Law a reality. The PKI mobilized farmers into 'unilateral actions' (*aksi sepihak*) to seize the land of large landowners and hold demonstrations in support of sharecropping. Unsurprisingly, this initiative provoked strong reactions from the Muslim landlords.[36] East Java was the scene of some of the most violent confrontations between Muslims and communists. Tellingly, in lowland Pasuruan the PKI failed to gain the support of the rural people as the power exerted by the *kyai*

[35] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 200.
[36] *Ibid.*, p. 201.

proved too strong. Realizing it was flogging a dead horse, the PKI in Pasuruan soon focused its attention on the uplands.[37]

In the years 1965 to 1966, Indonesia experienced a dark chapter in its national history as large-scale killings and civil unrest rocked the country. The killings generally targeted members of the PKI and its comrade organizations. The trouble began on the evening of 30 September 1965 when a group of militants who proclaimed themselves Soekarno's protectors executed six of Indonesia's top military generals allegedly to pre-empt a possible coup. However, Soekarno refused to associate himself with this movement. Now the cracks in the façade of his poor leadership begin to show. Major-General Soeharto, who at the time was the leader of Kostrad (*Komando Strategis Angkatan Darat,* Army Strategic Command), capitalized on the situation to claim control over the country. He deployed troops while propagating the idea that the movement's actions posed a danger to the nation. Masterminded by Soeharto and his military forces, propaganda associating the coup attempt with the PKI began to be disseminated.[38] The campaign was successful, convincing both Indonesian and international audiences that the murders were a PKI attempt to undermine the government under President Soekarno. Nevertheless, the writing was on the wall and public opinion began to shift against Soekarno, disturbed by his undisguised sympathy for the events of 30 September and his tolerance of communist elements.

Soeharto presented the campaign as a nationwide conspiracy to commit the mass murder of large segments of the population associated with the PKI. The army removed those top civilian and military leaders it thought sympathetic to the PKI. By the end of October, the propagation of this conspiracy theory had easily won the support of the Muslim leaders. These leaders, many of whom controlled large swathes of agrarian land, felt threatened of the PKI's efforts to speed up land reform. Furthermore, groups of devout Muslims joined in the purges against communists, arguing that it was

[37] *Ibid.*, p. 202.
[38] Jerome R. Bass, 'The PKI and the Attempted Coup', *Journal of Southeast Asian Studies*, vol. 1, no. 1 (1970), pp. 96–105.

their bounden duty to cleanse Indonesia of atheism. In March 1967, the Parliament stripped Soekarno of his remaining power and Soeharto was appointed as Acting-President. In 1968, Soeharto was appointed to the first of his five-year terms as President. The term New Order was used to distinguish Soeharto's regime from Soekarno's Old Order.

During the New Order era, under the banner of Pancasila, the New Order attempted to control Islamic forces. Islamic political parties were weakened and merged into a single one in 1973 and, later, this new body was obliged to replace its Islamic foundation with Pancasila.[39] The philosophical foundation of the nation, ideologically Pancasila is not secular. Instead, it comprises five principles, the first of which is belief in One God. To reinforce this state ideology, a number of local governments initiated the idea of creating so-called Pancasila villages. Behind the concept lies the desire for people to have peaceful and prosperous lives and to strive for equality before the law. It was also meant to encourage citizens to make strong a commitment to practising their religious doctrine, particularly Islam. Consequently, it is not too farfetched to say that this idea was meant to be the New Order's strategy orchestrated to gain Muslim support. The Pasuruan government was also encouraged to establish these villages.[40] In its campaign the central government stressed that commitment to the religious principle in Pancasila was the determinant in the application of the other principles. Therefore, the development of traditional Islamic schools (*pesantren*), which produced Islamic leaders, was considered consistent with the spirit of Pancasila.

Despite the success of this tactic, the New Order felt it necessary to establish another channel of communication with the Muslim community. In 1975, The MUI, was established as a vehicle through which to mobilize support for its development policies from Muslims. In the 1990s, the New Order seemed to reach a turning point when it

[39] Martin van Bruinessen, 'Islamic state or state Islam? Fifty years of state-Islam relations in Indonesia Hamburg: Abera-Verlag', in *Indonesien am Ende des 20. Jahrhunderts*, ed. by Ingrid Wessel (Hamburg: Abera-Verlag, 1996), pp. 19–34.
[40] Pemda Kab Pasuruan, *The Present Day of Kab Pasuruan* (Pasaruan: Pemda Kab Pasuruan, 1974).

established the Association of Indonesian Muslim Intellectuals (Ikatan Cendekiawan Muslim Se-Indonesia, ICMI). Some argued that the ICMI reflected the growing influence of Islam in the bureaucracy and the rise of a Muslim urban 'middle class'.[41] However, some others have claimed that it was an expression of the continuing Islamization of daily life which had occurred in the 1970s and 1980s.[42] In Pasuruan the trend towards the growing influence of Islam among the Muslim middle class did not seem to happen. *Pesantren* were not dislodged from their position as the key social institution which sustained the development of Islam in the area.

3. Cultural, Religious and Political Life

Islam, which came from the northern part of Central Java, penetrated into this area in the first part of the sixteenth century.[43] As Islamization took hold in this region it led to the development of what is known as coastal Islam (*Islam pesisir*) and slowly but surely it emerged as the centre of so-called traditionalist Islam.[44] The most fundamental feature of this type of Muslim community is its deep commitment to upholding religious traditions such as collectively reciting *dhikr* (remembrance of Allah, a series of devotional acts) dedicated to the dead and reciting prayers for the Prophet (*solawatan*) as well as deep-seated obedience to religious leaders.

The influence of Islam was reinforced by the expansion of traditional religious schools (*pesantren*) in the northern lowlands during the last half of the nineteenth century. These schools became centres of the propagation of traditional Islam. On a wider scale, they were also crucial to lowland politics and social structure. Marital ties

[41] Robert W. Hefner, 'Islam, State, and Civil Society: ICMI and the Struggle for the Indonesian Middle Class', *Indonesia*, vol. 56, no. October (1993), p. 32.
[42] Bruinessen, 'Islamic state or state Islam? Fifty years of state-Islam relations in Indonesia Hamburg: Abera-Verlag'.
[43] M.C. Ricklefs, *A history of modern Indonesia* (Bloomington: Indiana University Press, 1981), p. 34.
[44] M.C. Ricklefs, *Polarising Javanese society: Islamic and other visions, c. 1830-1930* (Leiden: KITLV Press, 2007); Koentjaraningrat, *Javanese Culture* (Singapore: Oxford University Press, 1985), p. 318.

connected wealthy families to *pesantren* teachers. Ordinary villagers were also expected to make gifts of money and land to religious teachers to support the running of the *pesantren*.[45]

Nevertheless, Hefner remarks that Pasuruan is one of the most heterogeneous regencies in Java[46] As I have already mentioned, *kejawen* holds sway in the south while Islamic traditionalism predominated in the north. This Islamic orientation is not the preserve of certain social classes, but spans them all. In this section, I wish to explain particular traits of the Pasuruan people who live in the northern lowlands, including their culture, religion, patron-client ties and politics.

3.1. Cultural Life

My personal acquaintance with this area began when I studied in an Islamic secondary school (*madrasah aliyah*) in the town of Jember in the late 1990s. I passed through this area on my way back and forth to my hometown, Sidoarjo. The character of the people living in the vicinity of my school was not so much different from the people living in Jember. The most distinctive feature of a community is its language. By and large the people speak in Madurese or, when they do speak in Javanese or Indonesian, they do so with a Madurese accent. As discussed earlier, the strong influence of Madurese culture in this area, and other eastern East Java parts in general, has a long historical trajectory. The emigration from Madura constituted a new diaspora in Java.[47] After an intense socio-cultural interaction with the natives of the eastern part of Java, a new-hybridized culture was formed called *pedalungan* or *orang campuran* (mixed people).[48] This new culture displays special characteristics, namely: the use of local language, the pattern of economic activities and political participation.[49] Another

[45] Hefner, *The Political Economy of Mountain Java: An Interpretive History*, p. 195.
[46] Hefner, 'Islamizing Java? Religion and Politics in Rural East Java', pp. 533–554.
[47] Husson, 'Eight Centuries of Madurese Migration to East Java'.
[48] Konstantinos Retsikas, 'The Power Of The Senses: Ethnicity, History and Embodiment in East Java, Indonesia', *Indonesia and the Malay World*, vol. 35, no. 102 (2007), p. 970.
[49] Retsikas, 'The Power Of The Senses: Ethnicity, History and Embodiment in East Java, Indonesia'; Konstantinos Retsikas, *Becoming – An Anthropological Approach to Understandings of the Person in Java* (London: Anthem Press, 2012).

reference calls them *pendhalungan*. The term comes from the word "*dhalung*" in Javanese which means a big pot in which rice is cooked. This area has become a melting pot of Javanese and Madurese culture.[50] The society is identified with an agrarian culture, hard work, strong feelings of solidarity and great respect for Islamic leaders.

The other major sub-cultures of East Java are known as *arek* or *arek'an* and *matraman*. I spent my childhood in Sidoarjo in which both language and culture are characterized as *arek'an*. Geographically, *arek'an* culture is located in the central part of East Java, stretching from Surabaya to south coast of Malang regency. The term *arek'an* itself comes from the Javanese word *arek* which means children or young people. *Arek'an* is associated with being 'modern' in terms of open-minded, rational, well-educated and able to adapt easily to new situations. From the religious point of view, if *pendhalungan* are said to be very fervently attached to a traditional type of Islam and are identified by their great respect for Islamic leaders, *arek'an* tend to practise Islamic traditionalism rather less assiduously. The third sub-culture, *matraman*, is situated in the western part of East Java, from the north to the south coast, bordering the province of Central Java. They still preserve a culture which has been inspired by in the Mataram sultanate in Central Java. They are identified with a more subtle use of language, their respect for kingship and their embracing of the most refined values of Javanese culture such as their facility in the use of a polite language in daily conversations. Local norms are set on the basis of patriarchy and hierarchy.[51]

Besides the language marker, another indication of the *pendhalungan* community is the way people dress. Although they follow a similar traditional model of understanding Islam as in other places in East Java, the women in this area show distinct peculiarities in dressing. Embracing the Madurese culture, the women, both young

[50] Christanto P. Raharjo, *Pendhalungan: Sebuah 'Periuk Besar' Masyarakat Multikultural* (presented in Jelajah Budaya 13 August, 2006), p. 3.
[51] Mufidah Ch, 'Complexities in Dealing With Gender Inequality: Muslim Women and Mosque-Based Social Services in East Java Indonesia', *Journal of Indonesian Islam*, vol. 11, no. 2 (2017), pp. 459–88.

and old, wear *kebaya* (traditional Indonesian blouse), traditional hijab (*kerudung*) and sarongs or wrap-around skirts in bright, contrasting colours. The idea behind the selection of such colours is that they reflect courage, openness and a certain straightforwardness. The men wear a loose black blouse with red and white stripes. The sharp stripes are meant to encourage the building of a firm character and fearlessness in facing challenges. The loose clothes indicate freedom and openness. This outfit is called *pesa'an*, and is worn on both formal occasions and in daily life. The women like to wear accessories and really conspicuous jewellery. It can be fashioned from either gold or silver and sometimes includes unique motives. Jewellery is worn to display social and economic status.[52]

3.2. Religious Groups

The regency of Pasuruan has long been one of the most important centres of Islamic traditionalism in Java. As a channel of traditionalist Muslim clerics, after its foundation, the NU quickly attained dominance in lowland political life. In the Indonesian religious landscape, a 'traditionalist' is someone who embraces one of the four Sunni schools of jurisprudence.[53] Islamic traditionalism is the main feature which distinguishes the NU from Muslim 'modernist' or 'reformist' organizations.[54] In addition to its adherence to traditional Islam, the NU has been forthright and quite active in promoting the role of a religious civil society by criticizing the state power and by becoming a vehicle for social cohesion among citizens in the 1980s and 1990s. The NU became a political party in the 1950s but was merged into the Partai Persatuan Pembangunan (PPP, the United Development Party) in 1973. Finally, at the NU Situbondo National Congress (*Muktamar*) in 1984, a group of its intellectuals and activists urged for a return to the *Khittah* (Guidelines) of 1926. This would have meant that the NU abandon politics and revert to being purely religious and social

[52] Etty Herawati, *Kain dan Pakaian Tradisional Madura* (Jakarta: Dinas Museum dan Sejarah, Pemerintah DKI Jakarta, 1979).
[53] Rumadi, *Islamic Post-Traditionalism in Indonesia* (Singapore: ISEAS-Yusof Ishak Institute, 2015), p. 23.
[54] Faisal Ismail, 'The Nahdlatul Ulama: Its Early History and Contribution to the Establishment of Indonesian State', *Journal of Indonesian Islam*, vol. 5, no. 2 (2011), pp. 247–82.

organization.[55] However, since the collapse of the New Order, many NU leaders have dominated strategic positions in the central government bureaucracy, let alone in Pasuruan.

Within NU itself a diversity of religious tendencies is apparent. Some NU leaders in Pasuruan adhere strictly to classical *fiqh* doctrines when it comes to the relationship between religions, religious minorities and some particular issues within Islam, such as polygyny. They are quite critical of the central organizers of the NU who have promoted modern ideas of tolerance and pluralism. This critical group is anecdotally known as *NU Garis Lurus* (Straight Path NU). *Kyai* who have limited education and live in *kampung* (village) are likely to be proponents of this group.

Despite this divide, the majority of NU leaders in Pasuruan prefer to cultivate an understanding of the middle path of Islam. They promote an idea called *Islam Nusantara* (Archipelago Islam) which represents the close interaction between Islam and local cultures. *Islam Nusantara* emphasizes the understanding that to be a Muslim, one does not have to ignore national and local identities. Instead, both national and local identities can co-exist with an Islamic identity. The combination of the two can assist one to be a devout Muslim and a Nationalist at the same time. This 'progressive' line of NU began to gain popularity among NU members when Abdurrahman Wahid chaired this organization from 1984 to 1999). Wahid successfully led NU in its adoption of values such as democracy and religious tolerance.[56]

The NU is not the only Islamic group active in Pasuruan. Although the Muhammadiyah and Persis (Persatuan Islam, Islamic Union) also have a presence, they are less popular. Both organizations were inspired by the reformist movement inaugurated by Muhammad Abduh in the magazine *Tafsir Al-Manar*. The Muhammadiyah chose to follow a path which emphasizes both religious and secular education and a tolerance of other faiths. In contrast to the NU, the

[55] Robin Bush, *Nahdlatul Ulama and the Struggle for Power within Islam and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2009), p. 28.
[56] Alexander R. Arifianto, *Islam Nusantara & Its Critics: The Rise of NU's Young Clerics*, no. 18-23 January 2017 (Singapore, 2017).

Muhammadiyah encourages its followers to use their own legal reasoning (*ijtihad*) rather than adhering to tradition. Adherence to legal decisions made by previous jurists (*taklid*) should be avoided. This religious idea is designated *pemurnian akidah* (purifying the faith).[57] As did the Muhammadiyah, Persis has evolved in the direction of reforming traditional Islamic practices. It opposes the practice of kissing the hand of another person as a sign of respect, a practice which remains part of NU tradition.[58]

Furthermore, Bangil, the capital of Pasuruan, is home to the headquarters of Shi'a Islam in Indonesia. The rapid development of this Islamic stream led to an anti-*Shi'a* protest in 2007. The protest, mainly championed by older NU members, took place in front of the YAPI (Yayasan Pesantren Islam) in Bangil. The YAPI is a *pesantren* which belongs to *Shi'a* Muslims. It was founded by Husein al-Habsy, an Indonesian of Arab descent, in 1976 and has expanded into an established educational institution covering primary to high school which welcomes students not only from *Shi'a* but also *Sunni* families. The same protest recurred in 2011. The attackers threw stones at a female *pesantren* of the *Shi'a* community.

This action angered the youth wing of the NU, *Ansor*, which urged police to investigate the attack. This youth wing of the NU is genuinely concerned with the right to exist of religious minorities and is not in favour of the far-right wing of Islam. Other youth forums also showed their concern and organized a rally in front of the YAPI, claiming that the protection of diversity is enshrined in the national motto of *Bhinneka Tunggal Ika*.[59] This stand on a point of principal demonstrates that there is a tendency among the younger generation of the NU to embrace a more moderate understanding of Islam, one which encourages the protection of religious minorities.

[57] James Lowe Peacock, *Purifying the Faith: the Muhammadijah Movement in Indonesian Islam* (Chapel Hill: University of North Carolina Press, 1978).
[58] Jeremy Menchik, *Islam and democracy in Indonesia: tolerance without liberalism* (New York: Cambridge University Press, 2016).
[59] Samsu Rizal Panggabean, 'Policing Sectarian Conflict in Indonesia: The Case of Shi'ism', in *Religion, Law and Intolerance in Indonesia*, ed. by Tim Lindsey and Helen Pausacker (London: Routledge, 2016), pp. 280–1.

Another recent development is that the right-wing Islamic organization established in August 1998, the Islamic Defender Front (FPI, Front Pembela Islam), which is most strongly represented in the urban areas, has begun to gain influence in rural areas. From a theological point of view, it is not different to the NU and a number of local *kyai* have even shown an interest in it. The FPI promotes the idea of *amar makruf nahi munkar* (commanding what is good and forbidding what is evil) and even allows the use of violence in its implementation. Its principal attraction to this idea is that the organization perceives it to be part of real *dakwah* (propagation/proselytization). The FPI has become rather notorious for its paramilitary division which carries out intensive raids on massage parlours, bars, karaoke venues, gambling centres and other 'evil places', especially during Ramadhan.[60]

The relationship between the FPI and the NU is not always good. During the last few years, the local branches of the FPI and the local NU youth organizations have often been at loggerheads and in 2017 the tension intensified, resulting in an attack committed by a group of FPI members on a house which belonged to a member of *Ansor*. The attack was triggered by a misunderstanding about a Facebook post which was believed to have humiliated the top FPI leader.[61] In mid-2017, the local FPI invited its top leader, Rizieq Syihab, to deliver a speech in the *tablig akbar* (great congregation). This sermon elicited a harsh reaction from the audience since he severely criticized the government and the leaders of the NU for not supporting the idea of assigning the *Sharia* a formal place in the fabric of the nation.

The traditional understanding of Islam as practised by the NU has influenced local people's social life in northern Pasuruan. Important phases of life, such as birth, marriage, birthdays and death, are celebrated and commemorated in a localized form of Islamic ritual.

[60] Helen Pausacker, 'Pink or Blue Swing? Art, Pornography, Islamist and the Law in Reformasi Indonesia', in *Religion, Law and Intolerance in Indonesia*, ed. by Tim Lindsey and Helen Pausacker (London: Routledge, 2016), p. 290.

[61] Muhajir Arifin, 'Gara-gara Postingan di Medsos, Ansor dan FPI Pasuruan Bersitegang', *Detik.com*, https://news.detik.com/berita-jawa-timur/d-3495695/gara-gara-postingan-di-medsos-ansor-dan-fpi-pasuruan-bersitegang, accessed 14 Oct 2018.

Beatty remarks that all rituals reflect the interests of orthodoxy in creating social harmony in the neighbourhood by recommending adjusting one's behaviour to unorthodox others.[62]

Figure 3.2. Traditional way of celebrating a birthday which is calculated on the basis of Islamic lunar calendar. The ceremony involves recitation of Quranic chapters, led by a religious leader.

3.3. Patron-Client Relations

The growth of traditionalist Islam is affecting the relationship between the state, religious leaders and the Muslim people. The robust commitment to Islamic traditions and the strict obedience to religious leaders (*kyai*) it requires have led to a complicating of the relationship between religion and the state. Community-level politics operate on the basis of the patron-client ties which characterize society in the easternmost part of East Javanese.[63] The bulk of these are manifested in informal institutions, for instance, *kyai* and *santri* (people of *pesantren*). These Islamic institutions and religious leaders are two

[62] Andrew Beatty, *Varieties of Javanese religion: an anthropological account* (Cambridge: Cambridge University Press, 1999), pp. 155–157.
[63] Phillip Drake, *Indonesia and the Politics of Disaster: Power and Representation in Indonesia's mud Volcano* (New York: Routledge, 2016), p. 5.

fundamental entities which maintain such power relations.[64] *Pesantren* serve as centres in which knowledge of Islam is transferred to pupils (*santri*) and *kyai* are reproduced.[65] *Pesantren* are not only considered to be the guardians of traditionalist Islam as a whole, but become part of both religious and socio-cultural institutions in which *kyai* are the main actors.[66] They preserve the chain of traditionalist Islam within the structure of intellectual and social networks, to which marriage and kinship make a considerable contribution. Both *pesantren* and *kyai* co-maintain the entity known as *santri* culture,[67] which entails a mixture of Javanese and Islamic cultures.[68] To put it simply, the religious orientation of traditionalist Islam is imbued with the people's devotion to a strict observance of Islamic principles and their intensive performance of religious rituals[69] and is inextricably identified with the core position of *pesantren* and *kyai* or *ulama* (religious leaders). These religious leaders are the main actors in the social relations[70] which uphold not only religious authorities through Islamic scholarship but also strongly define social and political roles. The relationship between them and local people is embodied in a patron-client tie.

After more than half a century, the time has come to re-assess Clifford Geertz's important 1960 work on Javanese *kyai* which has

[64] Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*; Robert W. Hefner, 'Reimagined Community: A Social History of Muslim Education in Pasuruan, East Java', in *Asian visions of authority: religion and the modern states of East and Southeast Asi*, ed. by Charles F. Keyes, Laurel Kendall, and Helen Hardacre (Honolulu: University of Hawaii Press, 1994), pp. 75–95.

[65] Azyumardi Azra, Dina Afrianty, and Robert W. Hefner, 'Pesantren and Madrasa: Muslim Schools and National Ideals in Indonesia', in *Schooling Islam: The Culture and Politics of Modern Muslim Education*, ed. by Robert W. Hefner and Muhammad Qasim Zaman (Princeton: Princeton University Press, 2010), p. 174.

[66] Ronald Alan Lukens-Bull, 'A Peaceful Jihad: Javanese Islamic Education and Religious Identity Construction' (Arizona State University, 1997), p. 5; Hiroko Horikoshi, *Kiai dan Perubahan Sosial* (Jakarta: P3M, 1987), p. 114.

[67] Yanwar Pribadi, 'Religious Networks in Madura: Pesantren, Nahdlatul Ulama, and Kiai as the Core of Santri Culture', *Al-Jami'ah: Journal of Islamic Studies*, vol. 51, no. 1 (2013), pp. 1–32.

[68] Zamakhsyari Dhofier, 'Kinship and Marriage among the Javanese Kyai', *Indonesia*, vol. 29 (1980), pp. 47–58.

[69] *Ibid.*, p. 50.

[70] Lukens-Bull, 'A Peaceful Jihad: Javanese Islamic Education and Religious Identity Construction', p. 5; Horikoshi, *Kiai dan Perubahan Sosial*, p. 114.

been a basis for further studies about their changing position in the complexity of social transformations in Indonesia. He argues, instead of being alienated from the pressures of Nationalism and Islamic modernism, the *kyai* transformed themselves into a kind of cultural broker for a different sort of interest. *Kyai* have not only played a significant role in transmitting Islam to the ordinary people and occupied a focal position within the traditional social structure, they have also managed to carve themselves out and play a new social role which has offered them the possibility to enhance their social power and prestige.[71] The political role of *kyai* has been most conspicuous in their function as a mediator of the political issues concerning Nationalism for the villagers surrounding them. Mansurnoor remarks *kyai* are, and always will be, embedded in the socio-political and religious lives of Muslims. He emphasizes the roles they play in maintaining the balance between their attachment to religious tenets and the local setting in which they operate.[72] The critical role played by *kyai* can take a variety of forms as either *kyai pesantren* or *kyai tarekat* (in Sufi orders). As suggested by Turmudi, as a group, *kyai* have striven either to make the existing social order compatible with religious ideals or to mould these religious ideals to be compatible with the existing order.[73]

Patronage is also a part of formal institutions, especially when religious leaders enter politics and the state bureaucracy. This tendency is incontrovertible when we look at the reality in Pasuruan in the last decade. Furthermore, *kyai* are commonly wealthy landowners, and therefore part of the social elite.[74] The upshot is that the local people in Pasuruan are heavily dependent on *kyai* socially and, even more importantly, in all matters related to religious normativity. For instance, they come to *kyai* to ask for blessing and

[71] Clifford Geertz, 'The Javanese Kijaji: The Changing Role of a Cultural Broker', *Comparative Studies in Society and History*, vol. 2, no. 2 (1960), p. 230.
[72] Iik Arifin Mansurnoor, *Islam in an Indonesian world: Ulama of Madura* (Yogyakarta: Gadjah Mada University Press, 1990).
[73] Endang Turmudi, *Struggling for the Umma: Changing Leadership Roles of Kiai in Jombang, East Java* (Canberra: ANU E Press, 2006).
[74] Dhofier, 'Kinship and Marriage among the Javanese Kyai'.

prayers or seek advice on an appropriate name for their offspring or the date of a marriage ceremony. It is only the *kyai* who has the authority to interpret the *Sharia*. In any interpretation of marriage and familial matters, rather than state regulations, it is *Sharia*, as embodied in *fiqh*, which is taken as the authoritative norm in the management of their daily lives, with a helping hand from the influence of local traditions.

How the state deals with religious issues remains an important topic of public debate in present-day Indonesia. The following short sketch illuminates how traditionalist Islam interacts with, or at least contests, the state in the Pasuruan context. It was at the end of the Islamic holy month of Ramadhan in mid September 2008 when a terrible tragedy hit the town of Pasuruan. Thousands of people, many of whom were mothers between the ages of forty and sixty, went to the private home of the famous and wealthy Saychon family. They descended on the house upon hearing news about an alms distribution which had spread like wildfire a few days before. In the early morning, they gathered in front of the gates in the hope of collecting the sum of Rp. 40,0000 ($ 3.07) in a cash donation. This distribution is supposed to be an annual tradition observed by that family. Unfortunately, the cash delivery turned into a deadly stampede. The women in front fought to scream as they were pushed from behind in the crowd. More than twenty people were crushed to death. Called to account, a Saychon son, Faruq, was named by the police as a suspect as he was the co-ordinator of this distribution. The local criminal court decided to sentence Faruq to three years' imprisonment, indicting him with negligence causing death.[75]

Unhappily that year, the Saychon family had not chosen a charitable institution to distribute the alms as had been its custom since the 1980s. Among the many reasons for this change of heart was that the family did not want to delegate its long-established identity as a philanthropist to other agencies. The Saychon family thought it

[75] Tempo.co, 'Trauma "Zakat Maut", Haji Syaichon Salurkan Zakat ke Badan Amil', *TEMPO Interaktif* (2009), https://m.tempo.co/read/news/2009/09/07/151196632/trauma-zakat-maut-haji-syaichon-salurkan-zakat-ke-badan-amil, accessed 15 Jun 2017.

important to maintain its social standing as a donor showing solidarity with the poor. Another version has it that, by holding such a self-managed-distribution, family members were more confident that the funds would reach the intended recipients, as it was dubious about the trustworthiness of existing private and state-run charitable institutions.

Not unnaturally, the tragic incident gave rise to religious debates about the legal status of the direct distribution of almsgiving. The head of the National Almsgiving Body (Badan Amil Zakat Nasional, BAZNAS), Didin Hafiduddin, was harsh in his criticism. He stated that direct distribution is not an Islamic tradition, but owes far more to feudal tradition. Nevertheless, he did not deny that there was a problem about social trust in government almsgiving agencies. [76] Taking a different tack, Hasyim Muzadi, the general head of the NU, was reluctant to accept the impermissibility of such private distributions. In his view, the path chosen by the Syaichon family was a genuinely good one but the negligence shown during the distribution was of legal matter subject to police investigation.[77] This case reveals several interesting social aspects. Undeniably individuals with a higher socio-economic status have the right/duty to employ their resources to provide protection and benefits to persons of lower status who reciprocate this gesture by owing obedience to their patron.[78] However, if its social status is to be preserved, this initiative should be undertaken privately, eschewing the involvement of the state agencies. The rationale is that, whenever the state sees an opportunity, it will try to usurp the mechanisms sustaining these patron-client relations.

[76] Tempo.co, 'Tebar Zakat ala Haji Syaikhon Tak Sesuai Quran', *TEMPO Interaktif* (2008), https://nasional.tempo.co/read/news/2008/09/16/058135727/tebar-zakat-ala-haji-syaikhon-tak-sesuai-quran, accessed 15 Jun 2017.
[77] Tempo.co, 'Pembagian Zakat Haji Syaikhon Fikri Tidak Haram', *TEMPO Interaktif* (2008), https://m.tempo.co/read/news/2008/09/16/058135791/pembagian-zakat-haji-syaikhon-fikri-tidak-haram, accessed 15 Jun 2017.
[78] James C. Scott, 'Patron-Clients Politics and Political Change in Southeast Asia', *The American Political Science Review*, vol. 66, no. 1 (1972), p. 92.

Figure 3.3. Each family adopts its own respected *kyai* whose photos are commonly hung on the wall in the front room.

3.4. Political Sphere

Scholarly discussion has linked politics in East Java to *politik aliran* (stream politics). First proposed by Clifford Geertz, this is a political force which was built on deeply rooted streams present in socio-religious communities. Scholars have argued that the first democratic election in 1999 reflected the old pattern of *aliran* politics. Certainly this rings true when applied to East Javanese society. Despite the complex multi-party system available in Indonesia, electoral competition in East Java has unquestionably been dominated by two major *aliran*-oriented parties: the Partai Kebangkitan Bangsa (PKB, The National Awakening Party), the NU-based political party which broadly represents the traditionalist *santri* community, and the PDI Perjuangan which tends to attract the ballot-papers of the *abangan* voters. As times have changed, some scholars argue that the intense competition between individual candidates, publicly known as *perang figure* (war of personalities) has challenged the old *aliran* politics. These political candidates have not only managed to win votes from their traditional communities, but are now increasingly looking beyond the old *aliran* identities. *Aliran* remains central to the political life. Yet, current social changes have meant that *politik aliran* has lost

a lot of its significance.[79] The latest development has led to the rise of 'new clientelism' in which patron-client relations within *aliran* are weakening (*dealiranisasi*) and are being replaced by more open arrangements.[80]

During the four general elections held in Pasuruan since 1999, the PKB has won the most votes on the regency level. In the 2009 election, fifteen out of the fifty seats or 30 percent of the local members of Parliament were from the PKB. In the 2014 election, the PKB suffered a dramatic decline, gaining only twelve parliamentary seats or 24 percent. Second in the race were the nationalist parties, namely: PDI Perjuangan and Partai Gerindra, each with seven seats. Despite this decline, the PKB has succeeded in having one of its representative appointed president of the Parliament. Not only this, the current Regent, Irsyad Yusuf, who was a PKB member of the Parliament in the previous term, is an overarching icon of the triumph of both the PKB and NU. In the 2018 election for a new Regent, none of political parties proposed candidates to stand against him. He, supported by Gus Mujib Imron, the leader of the renowned Pesantren Al-Yasini, put himself up as the only single candidate (*calon tunggal*).

4. Social Life in Sumbersari

This section explores some particular aspects of the area in which I have been conducting my fieldwork. Sumbersari is a pseudonym of a sub-district. It is composed of seventeen villages in which the majority of the people, especially in the southern part, speak Madurese. Only those living in the north, bordering the town of Bangil, speak Javanese. Now, in spite of speaking in Madurese, all the local residents identify themselves as Javanese.

[79] Andreas Ufen, 'From Aliran to Dealignment: Political Parties in Post-Suharto Indonesia', *South East Asia Research*, vol. 16, no. 1 (2008), pp. 5–41.
[80] Rubaidi, 'East Java: New Clientalism and the Fading of Aliran Politics', in *Electoral dynamics in Indonesia: money politics, patronage and clientelism at the grassroots*, ed. by Edward Aspinall and Mada Sukmajati (Singapore: NUS Press, 2016), p. 277.

According to Retsikas, the area is characterized by an interesting idea of the endless transformation from one culture, Madurese, to another culture, Javanese, which he calls "becoming". Local people tend to describe the major character trait of the Javanese as the quality of *halus* (refinement), while the Madurese side is perceived as *kasar* (rough-and-ready).[81] Anthropologists have said that among Javanese people to 'behave as a Javanese' means 'to conduct him/herself with urbanity. In everyday life, a person is said to be "Javanese" if his or her daily behaviour mirrors the ideal of *sejatining becik*, which means aspiring to a character based on *pituduh* (acting advisedly) in the Javanese tradition. Conversely, somebody is said to be "not Javanese" if his or her daily way of life fails to reflect the good values embodied in Javanese culture.[82] Under these circumstances, Madurese try to become 'Javanese'. Despite their best intentions, this does not alter the negative stereotype of Madurese in circulation among the Javanese. Some Javanese still think that Madurese migrants are reluctant to integrate into Javanese society. Husson argues that Madurese are "the victims of a deep-seated prejudice which pictures them as coarse and brutal".[83] The situation is not improved by the fact they tend to resist exogamy and favour self-segregated residence.[84]

Sumbersari, as is common in Maduro-Javanese areas, has to contend with an array of social problems, chief among them poverty[85] and a tendency not to participate in formal education. This avoidance of the established formal educational system has made *pesantren* a central institution. *Pesantren* offer an alternative educational institution which is perceived to be adequate to fulfil their needs as it inculcates in students not only the knowledge they require to function

[81] Retsikas, *Becoming – An Anthropological Approach to Understandings of the Person in Java*, p. xiv.
[82] Ayu Sutarto, 'Becoming a True Javanese: A Javanese View of Attempts at Javanisation', *Indonesia and the Malay World*, vol. 34, no. 98 (2006), p. 41.
[83] Husson, 'Eight Centuries of Madurese Migration to East Java', p. 91.
[84] *Ibid.*, p. 92.
[85] Gerben Nooteboom, *Forgotten People: Poverty, Risk and Social Security in Indonesia, the Case of the Madurese* (Leiden/Boston: Brill, 2015).

in society but also instils religion and character-building in them. In the following, I seek to explore two major elements in Sumbersari.

4.1. Economy and Education

Based on the 2015 official record, Sumbersari has around 63,635 residents, with birth rate of 1.49 percent per year. The majority of the people of Sumbersari work as farmers and labourers (*kerja serabutan*). Seventy percent of the economic resources of the villagers is generated by the agricultural sector. The rate of unemployment is fairly high. Although the land, 50 percent of which is rice-fields, is generally fertile, the crops cultivated do not make any significant amount of money. The smaller area of the land is given over to dry cultivation (*tegal*) on which the people do plant rice here during the rainy season. However, as this is impossible in the dry season, they change to planting maize, mango trees and tuberose flowers. When adverse weather conditions mean that the going gets tough, the farmers raise cattle and goats. The majority of the women do not earn money outside the household. They sometimes do work at home embroidering the costume worn by women during Islamic prayers (*mukena*) but this generates only a very low income.

Participation in formal education of people ten years and older is generally low. Twenty-eight percent of them (or about 17,799 persons) have only completed primary school and not continued on to a higher level. This percentage decreases significantly on junior and senior high school levels. Only 6,171 people (9.7 percent) have a first-level secondary school certificate, while a mere 4,146 (6.5 percent) have finished senior secondary school. Nevertheless, it should be noted that these figures relate to secular education. This is a society which pays great attention to their children's religious education in various Islamic education institutions, ranging from small-scale *pesantren* to very large ones. Hence, their participation in informal *pesantren* education appears to be the best explanation of why the number going on to the last two levels of formal education is so low. It must also be said that, though youngsters are increasingly going on to

higher education (university), their number is still very small, 0.6 percent.[86]

On the level of the Pasuruan regency, it can be simply said that the number of formal Islamic schools is lower than that of formal public schools. However, coming down to the Sumbersari sub-district, Islamic schools appear to be at least as important as their public counterparts. Even on the level of middle school, Islamic schools are dominant. leaving that aside, what is obvious on both district and sub-district levels is that informal schools, *pesantren* and *madrasah diniyah*, are the most common educational institutions in the area. A *madrasah diniyah* is an out-of-school institution teaching subjects related to Islam. Its curriculum spans primary to high school level. As just mentioned above, the high number of *madrasah diniyah* on primary (*ūlā*) level is an indication of the concern among the locals about equipping their children with adequate knowledge of and skills related to their religion from an early age.

Quite aware of the situation, the local government has recently drawn up a policy designed to support the importance of *madrasah diniyah*. In 2016 the local regent (*Bupati*) issued Regulation No. 21/2016 which obliges Muslim pupils in the primary and junior high schools to attend *madrasah diniyah* for at least two hours in the afternoon.[87] Article 4 of the Regulation states that, as an informal school, the purpose of the *madrasah diniyah* is to expand children's capacity so as to form them into pious and well-behaved persons. The regulation also urges people to support the operation of *madrasah diniyah* financially.

4.2. *Pesantren* Atmosphere

Sumbersari is nowadays home to nearly thirty *pesantren* or about 10 percent of all the *pesantren* in Pasuruan. Based on statistical records, in 2014 there were 320 *pesantren* in Pasuruan alone. All the *pesantren*

[86] BPS Kab. Pasuruan, *Kecamatan Rembang dalam Angka 2015* (Pasuruan: BPS Kab. Pasuruan, 2015), pp. 46–8.

[87] Peraturan Bupati Pasuruan (Regent's Regulation of Pasuruan) No. 21 of 2016 On the Obligation to Study in a *Madrasah Diniyah*.

run *madrasah diniyah*, while some also run formal Islamic schools. However, not all *madrasah diniyah* belong to *pesantren*. Consequently the number of *madrasah diniyah* far exceeds the number of *pesantren*.[88] *Pesantren* represent a discourse of what it is to be a devout Javanese Muslim.[89] For people living in the lowlands, a *pesantren* education is considered to be an important factor in shaping their children's lives. Commensurate with this mindset, the ideal pattern is that, after completing primary school, female teen-agers study in *pesantren*. Middle-class religious families want their daughters to study in major *pesantren* which are renowned for their long-established tradition of the training of Islamic subjects.

Parents send their daughters to *pesantren* to equip them with a good understanding of Islam to assist them in their future. They are firmly convinced that *pesantren* will give a guarantee of the inculcation and protection of female morality. To ensure the system works properly, a *pesantren* education generally adopts the concept of educational segregation, keeping male and female pupils separated.[90] Although they are happy for their daughters to participate in this, for women in particular general education is still perceived as less important than religious education. This is because women are supposed to work in the home and raise children. The general line of thinking is that women do not need a good educational foundation to carry out these tasks. Local people seem to ignore the fact that a mother has more influence on educating children than a father. They refer these jobs to *dapur* (kitchen), *sumur* (well) and *kasur* (bed). Confirming this assertion, the general pattern shows that the number of female students in informal *pesantren* is significantly higher than the male students. To give an example, Pesantren Miftahul Ulum in Krajan village has around 600 female students and just 30 male students who board (*mukim*) in its dormitories (*pondok*).

[88] BPS Kab. Pasuruan, *Kecamatan Rembang dalam Angka 2015*, p. 54.
[89] Muhammad Latif Fauzi, 'Traditional Islam in Javanese Society: The Roles of Kyai and Pesantren in Preserving Islamic Tradition and Negotiating Modernity', *Journal of Indonesian Islam*, vol. 6, no. 1 (2012), pp. 125–44.
[90] Eka Srimulyani, *Women from Traditional Islamic Educational Institutions in Indonesia: Negotiating Public Spaces* (Amsterdam: Amsterdam University Press, 2012), p. 118.

Here is a review of how central informal Islamic education is that taught in *pesantren*. In mid-March 2017, I met Alfi from Sumbersari, a female student at a local Islamic university. I was eventually invited to visit her house and was introduced to Gus Raibin, her forty-seven-year-old father, who serves as an *imam*, leader of a small mosque (*langgar*), and her mother. In spite of its strong commitment to Islamic normativity, this family appears to present a notable exception. Their daughter is the only one from among other religious family members and others in their surroundings who has managed to reach a university education. Nearly all the women of Alfi's age are already married and busy with their children. I was curious about how local people generally view the relationship between religion and education. They explained me:

> "Sumbersari is different. Religion is the prime instrument in preserving morality. Girls are encouraged not to obtain a fully rounded education (*sekolah tinggi*). This is nothing to do with the lack of financial resources. People do not comprehend the contribution made to life by (secular) education. When women are assumed to become housewives, why spend much money for schooling? Furthermore, they believe that vocational high school only provides students with the skills required to work in a factory. There is a stereotype it is morally improper for a devout woman to do menial work."

However, the winds of change are coming and in the last decade, parents have been increasingly insistent that their children acquire not only a good understanding of Islam, but also acquire general knowledge and practical skills. Consequently, *pesantren* have been expanding their curricula to respond to these new aspirations. In my fieldwork I have found that, over the last few years a number of *pesantren* in Sumbersari have been attempting to reduce the gap between religious and secular education. This is coincident with the development on the national level which has shown a growing tendency for Islamic schools to be more open to change. In 2009, Pesantren Al-Ikhlas set up a vocational school (*sekolah menengah kejuruan*). Likewise, some year ago, in addition to the informal *madrasah diniyah*, Pesantren Roudlotunnajah expanded its range of formal schools. It opened an Islamic junior high school (*madrasah*

tsanawiyah) which educates students in both Islamic and secular subjects. Since the opening of this school, this *pesantren* has been enjoying a considerable increase in the number of students, although not all of them are boarders. This all suggests that parents are now aware that having a diploma in formal education is the touchstone to a much better life future for their children.[91]

Sumbersari itself does not have many major *pesantren*. The number of students who board in many of them generally number between twenty and one hundred. Only a few of them have more than 200 students. The majority of the students are local, but a few come from neighbouring areas and from places in Madura. The majority of the *pesantren* in Sumbersari have been established by *kyai* who are linked by ties of descent, marriage and education, forming an Islamic linkage which extends across eastern Java and Madura.[92] Many of them are graduates of the respectable Pesantren Sidogiri in Pasuruan. For this reason, numerous *madrasah diniyah* in Sumbersari are official branches (*ranting*) of the Pesantren Sidogiri's Madrasah Miftahul Ulum (MMU) which has been going since the 1930s. The MMU runs *madrasah diniyah* on four levels: *isti'dadiyah* (preparatory), *ibtida'iyah* (basic), *tsanawiyah* (middle) and *aliyah* (high). These *ranting madrasah* teach the same curriculum, subjects and references which are taught in the MMU headquarters.

Among East Javanese Muslim traditionalists, Pesantren Sidogiri enjoys the reputation of being the most distinguished and important centre for studying the classical books (*kitab*) on *fiqh* used by the Shāfi'ī school. Among the references taught are the *kitab* written by the Abū Shujāʿ family, including *Matn al-ghāya wa al-taqrīb* by the Baṣra jurist Abū Shujāʿ al-Iṣfahānī (d. 1197) and its commentary *Fatḥ al-qarīb al-mujīb* by Muḥammad Ibn al-Qāsim al-Ghazzī (d. 1512) and those produced by the Malībarī family such as *Fatḥ al-Mu'īn bi sharḥ*

[91] This is based on my interviews with the leader of this *pesantren*.
[92] Hefner, 'Reimagined Community: A Social History of Muslim Education in Pasuruan, East Java'.

Qurrat al-'ayn by Zayn al-Dīn al-Malībarī (d. 1579).[93] Pupils on the *aliyah* level are taught using *fiqh* sources from a comparative perspective. Its alumni network is well maintained, joined together in an association called *Ikatan Alumni Santri Sidogiri* (IASS, the Association of the Sidogiri Alumni). This network, encompassing district representatives throughout East Java, regularly holds a *bahsul masa'il* forum in response to the need to find solutions to everyday religious problems.

5. Conclusion

This chapter has offered a brief description of the historical context and the current developments in Islam and other fields in Pasuruan. Pasuruan is a regency in the province of East Java which is inhabited by a majority of Muslim communities which generally show a tendency towards practising the traditional Islam[94] encouraged by the NU. This religious orientation draws strength from the fact that many Pasuruan residents have historical roots in the island of Madura. For many centuries, Pasuruan has been the destination of Madurese migrants. Their migration certainly gathered strength because of the job opportunities offered by the sugar-plantation project in the nineteenth century. The migrants have acculturated with the Javanese, a mingling which led to a distinct sub-culture called *pedalungan* or *pendhalungan*. This community has been established on the basis of patron-client relationships in which *kyai* or the leaders of *pesantren* act as the patron.

The influence of Islam in Pasuruan was strongly reinforced by the expansion of traditional religious schools (*pesantren*) in the northern lowlands during the last half of the nineteenth century and the early

[93] Martin van Bruinessen, 'Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu, Comments on a New Collection in the KITLV Library', *Bijdragen Tot de Taal-, Land- en Volkenkunde*, vol. 146, no. 2 (1990), pp. 244–6; Scott C. Lucas, 'Justifying Gender Inequality in the Shāfi'ī Law School: Two Case Studies of Muslim Legal Reasoning', *Journal of the American Oriental Society*, vol. 129, no. 2 (2009), p. 242.

[94] Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*, p. xix.

part of the twentieth century. These schools served as centres for the propagation of traditional Islam. Although the influence of the NU is predominant, Pasuruan is home to different Muslim groups. These include modernist organizations such as the Muhammadiyah and Persis, albeit their influence is less strong. In addition to Sunni Islam, followers of Shi'i Islam can also be found in Pasuruan. Although they have a centre for their religious education, their existence sometimes provokes harsh opposition from the local people.

The development of traditionalist Islam in Pasuruan constantly affects the relationship between the state, religious leaders and the Muslim community. The commitment to practising Islamic traditions and the strongly inculcated obedience to religious leaders (*kyai*) have led to a complicated relationship between religion and the state. Community-level politics operate on the basis of the patron-client ties which characterize the eastern part of East Javanese society in general. This social configuration appears to have infiltrated and influenced political life. Since 1999 in Pasuruan, PKB, an NU-based political party, has been the winning party on the regency level in the last four general elections. Furthermore, Irsyad Yusuf, the current Regent who is an ex-member of the PKB faction in Parliament can be considered an overarching icon of the triumph of the NU.

The political and social situation in Pasuruan is not significantly different from that in other areas in eastern part of East Java. Areas such as Probolinggo, Lumajang and Jember also have a big number of Madurese migrants who have evolved into a *pendhalungan* community. Nevertheless, Pasuruan does have its own idiosyncrasies which set it apart. Firstly, Pasuruan is geographically close to the capital city of Surabaya. The most obvious consequence of this proximity is the presence of a huge industrial complex in Pasuruan. On the bright side, the industrial development in this area has provided an ample range of job opportunities for the local youth. After finishing high school, there is a tendency for young people to want to make money as factory workers rather than going to university. Secondly, Pasuruan borders areas with an *arek'an* sub-culture. As I mentioned earlier, the *arek'an* sub-culture is considered 'modern'. There is a local

anecdote which says that *pendhalungan* people are deemed modern after they have adopted the Javanese *arek'an* sub-culture, speak Javanese or go to state schools. Thirdly, in its southern part Pasuruan is home to Mount Bromo, the centre of a non-Islamic movement, which makes Pasuruan one of the most heterogeneous regencies in Java.

Sumbersari, the area in which I have been doing my fieldwork, can be identified as an agrarian society. Agriculture contributes 70 percent of economic resources of the villagers. Sumbersari has to contend with an array of social problems, chief among them poverty and a tendency not to participate in formal education. This avoidance of the established formal educational system has made either *pesantren* or *madrasah diniyah* a central institution. *Pesantren* offer an alternative educational institution which is perceived to be adequate to fulfil their needs as it inculcates in students not only the knowledge they require to function in society but also instils religion and character-building in them. However, the winds of change are coming and in the last decade. *Pesantren* have been expanding their curricula to respond to a new aspiration, i.e. providing general knowledge and practical skills. This is coincident with the development on the national level which has shown a growing tendency for Islamic schools to be more open to change.

The next chapter focuses on marriage practices in a village in Pasuruan. It tries to understand the entanglement of local norms and the roles of local actors, namely *kyai* (religious clerics) and *pengarep* (voluntary traditional matchmakers*)* in the everyday practice of marriage. It specifically questions in what ways does the social structure of traditionalist Islam influence the practice of marriage in the community of Sumbersari in Pasuruan. Significantly, it also includes an analysis of the roles of the individual agencies of the couples in shaping a marriage.

CHAPTER 4

Everyday Practice:
Roles of *Kyai* and *Pengarep*

1. Introduction

In Muslim societies, marriage is a legal act, an exchange of a contract regulated by a code of law rooted in religious precepts. In social practice, it is imbued with the variety of local norms and influenced by the diversity of local actors throughout the Muslim world.[1] This chapter examines how these norms and actors interact with each other to shape these marriage practices. Its aim is to broaden our understanding of the entanglement of different norms governing marriage and the roles of the actors involved in everyday marriage practice in a village. This chapter seeks to answer the following questions: What do locals consider the fundamental norms which constitute a marriage? In what ways do individuals negotiate with these norms? To what extent do local actors such as *kyai* (religious leaders) and *pengarep* (marriage intermediaries) become involved? What are their orientations? What changes have taken place?

The material in this chapter is the fruit of my fieldwork in Sumbersari, a religious sub-district in rural eastern East Java. As mentioned in the previous chapter, at first glance Sumbersari society

[1] Ali, 'Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines'; Alami, *The Marriage Contract in Islamic law in the Shari'ah and Personal Status laws of Egypt and Morocco*.

looks fairly homogenous. First and foremost it can simply be identified by its strong attachment to a certain form of Islam, generally referred to as 'traditionalist Islam',[2] characterized by what is known in Indonesia as '*santri* culture'.[3] Nevertheless, despite its homogeneity in terms of Islamic orientation and practices, contemporary Sumbersari presents an interesting spectacle of heterogeneity in marriage practices. For this reason, this chapter offers some narratives which reveal the complicated relationship between the norms, the agency of the actors involved and the social structure so as to expose some recent changes.

Below I commence with an overview of the intermixture of Islamic and cultural norms in Sumbersari. To illustrate this, I present a brief sketch of how a young man dealt with localized norms and the social actors which impacted on the social process prior to his marriage, namely: the finding of a potential spouse. His experience leads me to an overview of the broader spectrum of social life in Sumbersari. Here I identify issues that are key to marriage practices: the centrality of informal Islamic education compared to other institutions and economic life. The next section seeks to demonstrate the ways in which the virtues of an ideal spouse are determined by the complicated relationship between social actors. The last section presents a summing up of my thoughts.

2. Presenting Munir-Ulfa

Munir was a twenty-nine-year-old married man when I first met him in early 2017. Wearing sarong and a fake jersey of an English football club, he welcomed me to the house in which he lives. The house is not

[2] Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*; M. Bambang Pranowo, 'Pesantren, Traditional Islam in Contemporary rural Java: The case of the Tegal Rejo Pesantren', in *Islam in the Indonesian social context*, ed. by M.C. Ricklefs (Clayton: Monash University Centre of Southeast Asian Studies, 1991), pp. 39–56; Mun'im Sirry, 'The Public Expression of Traditional Islam: the Pesantren and Civil Society in Post-Suharto Indonesia', *The Muslim World*, vol. 100, no. 1 (2010), pp. 60–77.

[3] Dhofier, 'Kinship and Marriage among the Javanese Kyai'; Pribadi, 'Religious Networks in Madura: Pesantren, Nahdlatul Ulama, and Kiai as the Core of Santri Culture'.

his own, but belongs to his parents-in-law, which is in line with the still fairly common uxorilocal tradition, requiring that, after marriage, a husband lives in the bride's house. I was introduced to his family by my local female collaborator who was a classmate of Munir's wife when they studied in the same *pesantren* during the period of 2006 to 2012. When I visited them, it was in the expectation of having an initial glimpse of the allegedly popular practice of *nikah sirri* (unregistered marriage). Interestingly, he tried to convince me that this custom has begun to decrease, although he did mention some of his female neighbours whose (re)marriages had been concluded without the benefit of official registration. We then suddenly moved on to a very personal talk about his life trajectories up to the moment of his marriage.

Munir graduated from a local junior Islamic high school (*madrasah tsanawiyah*) in 2002. He did not go on to study in a *pesantren*, but has instead continued his religious education since in an Islamic primary school (*madrasah ibtidaiyah*), in which he spends almost all the afternoon learning about Islam. Munir has been studying various subjects associated with Islam, ranging from *akidah* (theology), *fiqh*, *akhlak* (ethics) to Arabic grammar (*nahwu*). He is fairly familiar with the classical *fiqh* doctrines like those documented in 'yellow' Islamic treatises (*kitab kuning*).[4] After graduating from junior high school (*sekolah menengah pertama*), for a number of reasons, Munir decided not to continue his studies, despite the fact he was assured of his parents' support. One important hindrance was the problem he had making sense of what higher formal education could contribute to his life. Acquiring a thorough understanding of Islamic matters has seemed to him to be more important. Munir explained in more detail:

> "The expectation of those who study at senior high school is to find a job in a factory. This idea does not appeal to me. You have to follow strict rules, especially those dictating the working hours. This severely curtails your flexibility. What if one of your family

[4] Bruinessen, 'Kitab Kuning: Books in Arabic Script Used in the Pesantren Milieu, Comments on a New Collection in the KITLV Library', p. 227.

> falls ill and you need to accompany him/her to a medical centre? [In a factory] You have to submit a letter asking for permission to do so. That is too awkward. My younger brother who has just received a letter of acceptance from the factory has decided not to take up the offer. He prefers to run a street stall."

For the period of three years, Munir was employed as a teaching assistant (*guru bantu*) at the *madrasah ibtidaiyah* in which he studied. After the holy month of Ramadhan 2006, Munir chose to follow his uncle and head to Jakarta, the capital city. After a while working in Jakarta as a builder's labourer, he moved to Subang (West Java), working in a small restaurant (*warung*) owned by a man from Malang, East Java. From there he moved on to other cities in East Java, first Jember and later Surabaya. While he was in Surabaya, he was happy as he was able to manage to visit his parents in his home village once every two weeks. However, in the mid-2010 he decided to leave his job, because he needed to take care of his father who was growing older and weaker.

Meanwhile, his father was worried about his son's future family life. At twenty-three, Munir was still not married. Villagers generally consider a bachelor of this age to be rather too old to marry, especially as he was in a position to support a family.[5] Aware of his predicament, Kholil, their neighbour offered to help him seek a suitable wife. The former was thinking of a close relative of his in his natal village, who had a daughter called Ulfa. At that time she was fifteen and studying in a renowned *pesantren* in a suburb of Pasuruan. Munir and his parents accepted Kholil's offer. Subsequently, Kholil paid Ulfa's parents a visit conveying them the message that a man would approach them with a proposal asking their daughter to be his wife. Kholil played the role of marriage broker, referred to locally as a *pangadek* or *pengarep*. A *pengarep* is commonly perceived to be undertaking a worthy mission because he or she is facilitating the communication between the two

[5] Geertz, *The Javanese Family: A Study of Kinship and Socialization*, p. 56.

families concerned.[6] This social process is what local people refer to as *ngen-angen* (literally winds, spreading the word).

Ulfa was the only daughter in her family. Her parents were happy to receive the proposal. Neither Ulfa nor Munir were known to one another before. Ulfa's parent eagerly anticipated Munir's visit. This visiting stage, called *namu* in Javanese, signifies a kind of preliminary negotiation.[7] Culturally speaking, the parent's agreement to the man's visit implies their approval of him taking their daughter as a wife. Following the approval of Ulfa's parents, Munir visited her house accompanied by the *pengarep*. In traditional Javanese society, this stage is called *nontoni* (viewing).[8] The purpose of the visit is to give both the prospective husband and the girl a chance to see each other. In this *nontoni* stage, Ulfa did not join the meeting. Instead, she was asked to serve guests a cup of coffee, bringing it from the kitchen to the front room. It was in this very short encounter which enabled them to see each other. Munir made up his mind to marry Ulfa. Religious considerations, particularly the idea of the purity (*kesucian*) of a girl,[9] were a fundamental reason in his decision. Ulfa was studying in a *pesantren* which Munir, and local people in general, assumed would strictly guard the sexual morality of its pupils. Ulfa was then engaged (*neket*).

The choice of Ulfa's prospective husband was made by her parents. Ulfa depended on her parents whom she believed were in a position to decide the worth of her potential spouse so as she and he might enjoy a blessed life together. The marriage proposal was accepted, but the marriage contract was suspended until she had completed her studies. In some cases, when there is a big age gap

[6] Anke Niehof, *Women and Fertility in Madura (Indonesia)* (Leiden: Instituut voor Culturele Antropologie en Sociologie der Niet-Westerse Volken, 1985), p. 115.
[7] Geertz, *The Javanese Family: A Study of Kinship and Socialization*, p. 62.
[8] Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 446.
[9] Middle-class rural women in numerous parts of the world also have the tendency to accept patriarchal norms of honour and purity. See Santi Rozario, 'Islamic Piety against the Family: From "Traditional" to "Pure" Islam', *Contemporary Islam*, vol. 5, no. 3 (2011), pp. 285–308; Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 453.

between the bride and the groom, parents marry their daughter off directly although, after the initial introduction, the prospective groom and bride generally have a chance to meet in private, under supervision. This was not the case with Ulfa and Munir, because Ulfa returned to the *pesantren*. They could not really be said to have had a proper courtship period involving a series of private meetings. During the waiting period prior to the wedding, Munir was occasionally invited by her parents to join them in a visit to give money (*ngirim*, Javanese) to Ulfa in the *pesantren*. The locals jocularly refer to the man's participation as *ngredit* (paying off a loan). It is essential for a young man to become involved in this process so as to build his reputation as a good person with his potential parents-in-law and to socialize with their extended families.

Munir's ideas of what he expected of his future spouse give a strong hint of the significance of norms constraining women's sexuality imposed by *pesantren*. The *pesantren* education of a girl is important since it symbolizes purity. Over the centuries, Islamic norms on marriage have been an inseparable part of people's daily lives and have become embedded in the customary social system. In the process, the division between the two has somehow blurred. Like so many other aspects of Javanese society, when referring to early scholarly works on cultural norms (*adat*), it is difficult to identify which belong exclusively to Islam and which derive from the pre-existing tradition prior to the coming of Islam.

Clifford Geertz, referring to Mohamed Koesnoe, stressed the significance of the notion of propriety in any discussion about *adat*. He states: *Adat* is constructed as "the form of life of the Indonesian people as founded in their sense of propriety."[10] Therefore, Bowen has underlined that the term 'law' cannot be used to exemplify the complicated norms surrounding marriage and other matrimonial matters. In rural settings, legal matters are usually bound up with older people, religious commitment and a sense of propriety.[11] In the

[10] Clifford Geertz, 'Local Knowledge: Fact and Law in Comparative Perspective', in *Local Knowledge: Further Essays in Interpretive Anthropology* (New York: Basic Books, 1983), p. 210.
[11] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 18.

next section, we shall see how the sense of propriety operates in everyday practice and how local actors, such as *pengarep,* are key figures in the implementation of this strategy.

3. *Pengarep* and Cultural Norms

This section elucidates the role expected of a *pengarep* and examines the influence of different local norms on the social processes set in train prior to marriage. These norms are dependent on to which social category a family is considered to belong. Each narrative which follows represents one of these social classes. While the first story exemplifies a lower-class family, the second story reveals the process in middle-class families.

3.1. Case 1: Kulsum's Marriage

This is the story of the marital experiences of Kulsum. When I met Kulsum in early 2007, she was thirty-one and was married to her second husband. Her first marriage had been concluded in 2001, a couple of months after she graduated from an Islamic junior high school (*madrasah tsanawiyah*). Kulsum was raised in a religious family and claimed to be the only girl in the village at the time who had enjoyed any formal schooling. However, she did not pursue her education to a higher level and was eventually married off. She told me the following:

> "My father insisted that I keep studying. He accompanied me when I handed in a registration form at a *madrasah aliyah* in the centre of Sumbersari. This despite the fact my older sister had said *binek noapah asekola, monduk beih rapah* (for a woman's education, studying in *pesantren* is enough). Unfortunately, not long after, our beloved father was fatally injured in an accident. It was a destiny which changed my life dramatically."

Sometime after the accident, Kulsum was married to a man from the same village. The family's decision to marry her was unquestionably a direct consequence of her father's death. No one in the household was able to assume his mantle in providing the financial

support for her education. Kulsum had no other options available to her, as she herself succinctly said *neser reng tuah* (out of consideration for the parents). She did not make any verbal declaration giving her consent but simply acquiesced in the marriage arrangement. Her only recourse was to register her thoughts by remaining silent (Javanese, *manut*). Certain Shāfi'ī jurists have deemed that the silence of an unmarried woman can be taken as her consent.

Kulsum had reached the age of puberty when she was married. After the wedding, Kulsum was considered to be legally an adult and, therefore, competent to manage her marital life. The marriage was assumed to set the seal on her maturity. Hildred Geertz has remarked that marriage is an important rite of passage which marks the transition from social puberty to adulthood,[12] in a cycle of rites of passage set out in Van Gennep's framework.[13] Adulthood here denotes the stage at which women are considered capable of managing their own household affairs. The latter is congruent with the notion of *rushd* (legal capacity to contract or financial competency) in the classical *fiqh* doctrine. There is no exact demarcation line which determines the age of *rushd* of a woman but it does crucially involve reliance on the opinion of the *walī*. Some classical jurists, the Mālikī in particular, decree that marriage is an essential requirement for a woman to have financial competence.[14]

In fact, Kulsum began a family with very little knowledge about either sex or household management. Islamic marriage is a contract of exchange which involves a set of rights and obligations incumbent upon each party. Kulsum had the obligation to submit to husband

[12] Geertz, *The Javanese Family: A Study of Kinship and Socialization*.

[13] Van Gennep designated the ritual ceremonial patterns which mark an individual's transitions in his/her life as rites of passage. The concept of "liminality" was introduced to indicate the time in which people are teetering on the threshold of entering a new phase in their lives. Rites of passage include rites of separation, transition and incorporation. Marriage is part of the rite of incorporation, while rites of separation are most apparent in funeral ceremonies. Meanwhile, transition rites are found in the rituals surrounding betrothal and pregnancy. Arnold van Gennep, *The Rites of Passage* (London: Routledge & Kegan Paul, 1960), p. 11.

[14] Nayel Badareen, 'Identity and Authority: Changes in the Process of Debates over the Islamic Marriage Contract among Contemporary Muslim-Arab Intellectuals' (PhD Dissertation. The University of Arizona, 2014), p. 58.

because, reciprocally, she was assumed to have the right to maintenance. Under the umbrella of a marriage contract, she moved from her birth family to come under her husband protection. After marriage, Kulsum requested her husband and his family to be allowed to remain close to her mother. This was granted as she and her husband went to live in a house next door to her natal family's dwelling. The marriage unfortunately survived less than two years. She admitted that the husband was rude and disrespectful. When she encountered a problem with the husband, she lost no time in complaining about this to her mother. Moreover, her views about his bad behaviour were confirmed by remarks like *mak kerreng lakennah be'en jeh* (What a rude man your husband is) made by her older sister. It was suggested to Kulsum that she ask for a divorce from her husband. He granted her an out-of-court *talak* (pronouncement of divorce), witnessed by a religious leader and her family. Despite the social stigma of being a divorcée, Kulsum decided not to remarry. She preferred to continue her studies in the equivalent to a senior high school (*kejar paket C*) and participated in social activities. Only ten years later, in 2012, did she seek and obtain a legal validation of the divorce after lodging a divorce petition (*gugat cerai*, Indonesian) with the regional religious court. The divorce certificate enabled her to remarry legally.

3.2. Case 2: The Marriages of Fahim and Her Sister

Ibu Fatimah is a descendant of a local *kyai* whose family has played a respected role in the development of Islam in her village. Her first marriage ended in divorce. She then remarried to a man from a *pesantren* family and gave birth to two daughters. The first daughter, Fahim (now 22 years), studied in a *pesantren* in Pasuruan. After finishing the first two years, at the age of fifteen, she was unexpectedly brought home to be married-off to a man whom she had never even met before. Fahim was raised in a conservative family, in which the doctrine that a good daughter should never say no to her parents was inculcated in her. She was not allowed any room to negotiate and was married at the end of 2010. The very reason the parents wanted her to get married was, unquestionably, the man's social background and his

competency in knowledge of Islam. Her husband had studied for many years in a prestigious *pesantren* in the town and his current activities are still affiliated with that *pesantren*. Initial communications between the two families were mediated by a *pengarep* who was Ibu Fatimah's neighbour.

Fahim marriage was not the end of the story. In 2016, her younger sister, Anis (16 years), was subjected to the same experience. Ibu Fatimah was impressed by the personality of one of the teachers at a *madrasah diniyah* near her house. Mahmud, the teacher, was believed to be well mannered and be skilled in reciting the Quran (*pintar ngaji*). Somehow or other it reached Mahmud's ears that Ibu Fatimah wished to make him her son-in-law. It all began when Anis suffered a small accident in the *pesantren* in which she was studying. This necessitated that she had to return home in order to receive intensive medical treatment. Mahmud visited her and Ibu Fatimah rejoiced in the happy accident which gave Mahmud the chance to become better acquainted with her daughter. Unaware of any ulterior motive, Anis had no suspicion that this was an initial step would lead to her being married off. Not long afterwards, Mahmud came with his family to propose to her (*lamaran*). Her father agreed to the proposal as long as the marriage could be postponed for two years after Anis had finished her studies. Unfortunately, the father passed away a year later and his condition was thrown to the winds. Anis ended up marrying Mahmud a couple of months after her father's death.

3.3. The Important Role of *Pengarep*

In a society like that of southern Sumbersari whose culture is heavily permeated by influences from Madura, marriage is generally thought to be the prerogative of families. Obedience to one's parents, particularly the father, is the most important norm. This cultural norm is enshrined in a well-known Madurese dictum *bhuppa' bhabhu' ghuru rato* (father, mother, teacher and formal leader respectively). However, although the power over the household and landed to delegated to male authority, the marriage pattern tends to be uxorilocal. A husband moves to live with his wife's family after marriage, especially when he does not own his own house. This custom

means that it is relatively easy for a woman to get the protection and support of her natal family.

Both the cases just cited exemplify the practice of arranged marriage. In a nutshell, it is a form of marital union in which the parents, usually the fathers, choose appropriate spouses for their daughters or sons. This pattern tends to be even stronger and more frequent when the female spouse is young and the male is much older. Sumbersari people refer to this type of marriage arrangement as *ajuddhuagi* (married-off). This local term implies not only the decision about the choice of a spouse, but also the decision about the timing of the marriage is firmly in the hands of the parents. Furthermore, the arrangement is found whatever the type of marriage, registered or unregistered. However, it should be borne in mind that any decision to register is dependent upon multiple factors, such as whether or not the girl is of an age to enter into a legally registered marriage and the presence of a legal document in the case of remarriage.

Nilan argues that marriage among middle-class families is influenced by the two-pronged values of faith and family. However, faith is generally considered less important than family.[15] Furthermore, in different Asian contexts, the practice of arranged marriage is also justified by the juxtaposition of the ideologies of family honour and shame.[16] Local people usually opt for an arranged marriage, seeing it as a manifestation of control and an ability to ensure the preservation of social honour. As was Ibu Fatimah, parents of a certain class in Sumbersari are concerned about ensuring that their daughters marry a suitable man. For this reason, girls' mobility is subject to stringent control. The concept of who constitutes a possible husband is primarily based on the man's religious orientation and estimates of his moral capital. When a man well versed in religion comes to ask their daughter's hand, there is a feeling of afraid that the man will be married to another woman (*takok ekalak oreng*,

[15] Pam Nilan, 'Youth Transitions to Urban, Middle-Class Marriage in Indonesia: Faith, Family and Finances', *Journal of Youth Studies*, vol. 11, no. 1 (2008), pp. 65–82.
[16] Santi Rozario, 'Islamic Marriage: A Haven in an Uncertain World', *Culture and Religion*, vol. 13, no. March 2015 (2012), pp. 159–75.

Madurese) if they do not soon accept the marriage proposal , Wealth and social standing do not count as highly as the notion of good manners.

In the East Javanese context, Beatty has revealed that an understanding of the social sentiments helps us to recognize the roles of the undercurrents of emotions beyond the purview of the family but still within in the context of a community. Emotions such as shame, reluctance and respect construct a societal relationships in which the concept of *apik* [innate goodness, virtue], in opposition to ugly, not to play by the rules (*elek*), plays an ineluctable part.[17] The most visible embodiment of the notion of *apik* in the everyday practice of marriage is best revealed in the selection of a potential spouse. The scales are tipped by the emphasis placed on the degree of religious behaviour and moral character (*oreng bhagus*, Madurese: a good man), without the consideration that this could be superficial behaviour. An identity as a *santri* (a graduate of *pesantren*) is highly preferable. If someone presents a girl's parents a young man with this qualification, the latter will not decline the proposal. They believe in Islamic doctrine, based on the Prophetic tradition, which gives religion (*lidīnihā*) precedence above everything else when selecting a spouse.[18]

My fieldwork materials suggest that the financial resources of the groom frequently trail in as the least consideration. However, we cannot ignore that pragmatic considerations about the social background and economic circumstances of the potential husband do not escape the parents' attention. Therefore, despite the prominence given to the concept of *apik*, the economic motivations of a woman and her family sometimes do seem to offer the best reason to explain her decision to marry. The ideal situation is on in which the husband plays

[17] Andrew Beatty, 'Feeling Your Way in Java: An Essay on Society and Emotion', *Ethnos: Journal of Anthropology*, vol. 70, no. 1 (2005), pp. 53–78.

[18] One Prophetic tradition relevant to this issue is recorded in Islamic books, such as *Bulūgh al- marām*: "*Tunkaḥ al-mar'atu li'arba'in, lidīnihā, linasabihā, lijamālihā, wa limālihā*." This means that "marry a woman for the intensity of her religious devotion, kin reputation, beauty and wealth. Aḥmad b. ʿAlī Ibn Ḥajar al-ʿAsqalānī, *Bulūgh al-Marām min Adillat al-Aḥkām* (Riyadh: Maktaba al-Rushd, 2005), p. 350.

the role of breadwinner and the wife acts as a financial manager of the household.[19]

The concept of *apik* in marriage also infiltrated ideas about sexuality. It has to do with the notion of a woman's chastity. Chastity is culturally deemed an essential symbol of the family honour. Local people express this in the word *praban* (maiden or virgin),[20] which specifies the ideal condition of a possible wife. It is imposed by a social mechanism which prevents women from publicly indulging in interaction with unrelated members of the opposite sex. Those who breach this mechanism are labelled incapable of self-discipline (*ta' tao thenka*, Madurese). Likewise, when he chose Ulfa, Munir confessed that Ulfa's purity (*kesucian*) was the principal reason for his choice.

Moreover, it is impossible to reduce marriage to a simple, Islam-based-contract legitimating sexual intercourse between the bride and the groom.[21] It is just one part of a wide spectrum of social contexts. Hallaq has described the position of Islamic marriage as the cornerstone of communal harmony.[22] Looking at the issue more pragmatically, it is worth noting that numerous marriages in my research site have involved marriage partners from the same family. This sort of marriage is considered to be a good strategy by which to consolidate familial relationships and landownership. Described as *mapolong tolang* (collecting the scattered bones),[23] on a down-to-earth level this sort of marriage is intended to preserve the property of a family from depredations by outsiders (*oreng lowar*).[24]

Another aspect of the influence of the local culture on a marriage is the age of marriage. Sumbersari locals consider that nineteen is too late for women to embark on matrimony. Without a doubt, the

[19] Not confined to, this principle also applies to other cultures. See Nurul Ilmi Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage* (Leiden: Brill, 2016), p. 82.
[20] Niehof, *Women and Fertility in Madura (Indonesia)*, p. 107.
[21] Ali, 'Marriage in Classical Islamic Jurisprudence: A Survey of Doctrines', p. 12.
[22] Hallaq, *Shari'a: Theory, Practice, Transformations*, p. 271.
[23] Mansurnoor, *Islam in an Indonesian world: Ulama of Madura*, p. 84.
[24] A. Latief Wiyata, *Carok: Konflik Kekerasan dan Harga Diri Orang Madura* (Yogyakarta: LKiS, 2002), p. 58.

significance of marriage for women is bound up with the concepts of marriageability and "saleability". Society perceives an adult woman who is unmarried to be an unsaleable maiden or old spinster (*perawan tua*). Meanwhile, men are not tarred with this saleability stereotype when they remain unwed. Instead, the people in a circle around a bachelor will make fun of him, taunting him with being timid (*tak bengal*), *banci* (effeminate) or other allusions to sexual potency.[25]

Kulsum's marriage, and her divorce, underline the local notion of *juddhu* (*jodoh*, Indonesian; divine destiny). In the context of a spouse, *juddhu* has to do with the principle of *mompong* (good fortune). Parents, not necessarily the father, are more committed to the concept of *mompong bedheh se mentah* (feeling fortunate that a male is proposing marriage). The application of the principle enjoying good fortune is claimed to be justified by the Islamic ideas which circulate among the local people. Kyai Hidayat, a respected ulama of southern Sumbersari, argued that a woman should not accept anyone but a man who is religiously committed and of good character. He referred to a *hadith* narrated by al-Tirmidhī (d. 892) stating that, if there should come to a father to marry (his daughter) one who is religiously committed and of good character, he is pleased, then he should marry her to the man. If he does not, there will be tribulation (*fitnah*) in the land and widespread corruption.[26]

The notions of *mompong* and *apik* have proved to be decisive factors in determining the selection of a spouse. Besides these ideas, the role of the *pengarep* appears to be an important facilitating factor in the implementation of these notions. As in Munir's case, proposals of marriage are commonly conveyed to the girl's parents through the offices of a *pengarep* (marital intermediary), who sometimes also referred to as *pelantar*. A *pengarep* is a person, usually a family member or a close neighbour, who performs the role of brokering marriage between the two families concerned. Although this brokerage is undertaken voluntarily, once the role is assumed a

[25] Idrus, *Gender Relations in an Indonesian Society: Bugis Practices of Sexuality and Marriage*, p. 82.
[26] Abī 'Īsā al- Tirmidhī, *Jāmi' al-Tirmidhī* (Riyadh: Bayt al-Afkār al-Dawliyya, 1999), p. 192.

pengarep carries the responsibility of finding a suitable wife for a young man. The *pengarep* will do his/her best to answer her parents' requirements. Whatever the answer is, acceptance or rejection, the *pengarep* will communicate it to the man or his parents. Some people still believe that to reject the first marriage proposal for their daughter is a social solecism. There is a local belief that it can lead to *sangkal* (karma), the daughter to whom the proposal has been made will be doomed to remain a spinster. Based on Niehof's research findings in Madura in the 1980s, the concept of *sangkal* articulates concern about a girl's marriage prospects which contributes significantly to the perpetuation of the custom of early marriage.[27]

The role of a *pengarep* is essential in many ways, particularly when women's mobility and social interaction between the genders are strictly controlled. Gus Raibin, my key informant, indicated that, upon receiving an affirmative answer from the girls' parents through the *pengarep*, the man's family has the confidence to organize a betrothal (*peneket*). In other words, the presence of a *pengarep* might curtail the risk of embarrassment to the man's parents should the proposal be rejected. It underscores that the local notion of shame encompasses not only controlling girl's sexuality but also upholding family's dignity. In the case of a remarriage, the function of *pengarep* is also important. When a divorcée or a widow is approaching the end of the period of prescribed before a new marriage can take place (*'idda*), it is considered acceptable for a *pengarep* to approach her to deliver a new marriage proposal.

A *pengarep* also plays a role in remarriage. Despite the fact her divorce had not been legally recognized by the state, the community regarded Kulsum as a divorcée. Hence, she was often requested to welcome male guests (*tamu*) in search of a prospective wife. A *pengarep* was the intermediary who introduced them to Kulsum. On some occasions, her own brother-in-law assumed this role. Kulsum had great difficulty in coming to terms with this reality, although she

[27] Anke Niehof, *Women and fertility in Madura (Indonesia)* (Leiden: Instituut voor Culturele Antropologie en Sociologie der Niet-Westerse Volken, 1985), p. 109.

could understand why her close relatives were undisturbed by these proceedings. Her brother-in-law's principal motivation was to help Kulsum improve her situation in life. Although the situation caused her to feel uncomfortable, she did her best to negotiate her attitude to this long-standing local tradition. An agreed compromise between her and her brother-in-law was finally settled upon: *la kadung dennak jek dus nodusin, temmonen beih lah tak usa terrosagi* (when a guest already shows up, just greet him; there is no need to take it seriously).

4. Seeking 'Middle Ground': The Role of *Kyai*

This section elucidates the roles of religious leaders (*kyai*) in managing the problems of marriage and sexuality. The case I analyse stems from the experiences of Kyai Karim, a prominent *kyai* in Sumbersari, when he was faced with the problem of having to deal with a polygynous marriage. This case throws interesting light on his socio-political position. He is not just an ordinary religious leader who runs a *pesantren*. He is much more than this as he is counted among the top leaders in both social and semi-governmental Islamic organizations. For instance, he is the head of the sub-district level of the Indonesian Council of Ulama and is one of the advisory chairmen of the regional chapter of the NU. In both these positions, his has demonstrated that his grasp of how different legal systems operate is undisputable. Importantly, the locals recognize him as a religious leader whose understanding of Islam is not influenced by old-fashioned ideas (*tidak kolot*) and is open (*terbuka*) to the modernizing world. The case recounted below shows beyond doubt that he was able to maintain his authority as an *ulama*, that is, as he claimed, he assumed responsibility for taking charge of morality and was able to challenge the state law. Fealy and Bush have remarked that *ulama* find themselves subject to competing pressures exerted by the society and the state.[28] My research has shown that *ulama* are constantly challenged when they are confronted with the real problems in society which in fact require

[28] Greg Fealy and Robin Bush, 'The Political Decline of Traditional Ulama in Indonesia', *Asian Journal of Social Science*, vol. 42, no. 5 (2014), pp. 536–60.

a non-state settlement but none-the-less demand compliance with the state law. What follows is the narrative.

4.1. A Case of Polygyny

A few years ago, a man, Rudi, and a woman, Nana, arrived at Kyai Karim's *pesantren*. Rudi confessed that he had having a love affair (*pacaran*) with Nana, whose age at the time was around twenty-five, for a few years. Rudi even claimed to have rented Nana a house so that he could indulge in intimate relations (*seperti layaknya*) with her all the more easily. Kyai Karim argued that the word "*seperti layaknya*" expressed by Rudi was a pseudo-term to refer to having extramarital sex, known locally colloquially as *kumpul kebo* (living together without being married). Kyai Karim showed no hesitation in urging them them to undergo a marriage ceremony in order to legitimize (*menghalalkan*) their relationship. Then the cat was out of the bag. The problem was in fact not as straightforward as he had expected. Rudi was a civil servant and was already married to another wife. It is important to note that a male civil servant in Indonesia is prohibited to enter into a polygynous marriage without the permission of his superior (*pejabat*).[29] Kyai Karim was in a dilemma. As a religious leader, he was bound by the doctrine in classical Islamic law inspired by the fear that extramarital sex makes it obligatory for a man to marry. Meanwhile, under state law, the permission of the first wife is required.

To cut a long story short, he married them as he believed this was the only way to rescue the couple from living in sin (*kumpul kebo*) according to Islam. For Rudi, it was a polygynous marriage. After the conclusion of the marriage ceremony, Kyai Karim asked the couple to sign a letter declaring that they had been religiously married. This letter was in lieu of a marriage certificate. The letter mentions the names of the couples, the witness and the religious leader who solemnized the marriage. Kyai Karim urged Nana to tolerate her position as a second wife in an unofficially polygynous situation.

[29]This prohibition is enshrined in Government Regulation no. 45/1990 jo. Government Regulation no. 10/1983 on the permission for marriage and divorce of civil servants. See O'Shaughnessy, *Gender, State and Social Power in Contemporary Indonesia: Divorce and Marriage Law*, p. 34.

However, Rudi found it hard to maintain good relations with Nana, especially when Nana demanded legal certainty over her status as a wife. When Rudi failed to comply with Nana's demands, she decided to report their informal marital union to the man's supervisor, taking the signed informal marriage letter with her as proof. Soon this polygynous marriage was the talk of the town.

A prominent official from Rudi's office met Kyai Karim to make sure that Nana's complaint was soundly based. Should this prove to be the case, her husband could be subject to legal sanctions for having entered into a marriage which counted as non-procedural polygyny. The official alleged that Kyai Karim had married them illegally, accusing him of "selling" the marriage ceremony. Kyai Karim was highly offended and, in return, blamed the official for being incapable of controlling his staff's morality. He then challenged the official with a set of questions set out in the following conversation. w

Kyai Karim	:	Would you mind telling what is your current rank?
Official	:	Echelon 3
Kyai Karim	:	When you go away on official business do you ever meet a woman whom you want to date. What do you do then?
Official	:	Yes, this is no more than typically male behaviour.
Kyai Karim	:	Well now, you have finally mentioned that phrase "typically male". Do you want to 'buy' or to marry? I actually cannot accept polygyny because it is difficult to do justice to all the wives involved. But, if you do not marry, you are simply fornicating. Please do not complicate the problem, but find the best solution.
Official	:	Yes, *Kyai*, (this is tricky) so how should I go about it?
Kyai Karim	:	This situation obliges you to return to religious rules. You are supposed to respect not only state regulations but also religious teaching. The second should weigh more heavily.

This conversation shows that Kyai Karim resorted to Sharia in his search for as the solution to this problem of *kumpul kebo*, which he assumed to be a consequence of the obstruction generated by a state law. In this situation, he argued that Sharia had played an important role in safeguarding a person's religious life. However, he hastened to underline that religion should not be taken lightly as a broom to sweep up sins. In fact, when a couple has already sunk (*terperosok*) into moral turpitude and the state law can no longer provide a solution, the religious authorities cannot just abandon them to a moral limbo. He stated:

> "Polygyny is very casuistic. From an ordinary point of view, no wife can accept her husband taking another wife. I have a daughter. I shall never agree that her husband enter into other marriages. But, in the case in which a man finds himself morally obliged (*terpaksa*) to indulge in polygyny, he has no escape although his decision will not be not readily accepted to society. God has indicated that polygyny is difficult. It can only be resorted to in exceptional circumstances like preventing illicit sex."

4.2. Legal Reasoning

The expanding corpus of literature has been enhancing our insights into the complicated relationship between social norms and legal practice,[30] in which Sharia continues to act as an independent normative system. Cammack *et al.* have argued that control over marriage practice is played out in a contested arena in which different social actors seek to exercise their power.[31] Importantly, contemporary public debates about Islam and social change in Indonesia indicate that Sharia has been challenging the legal concept of marriage introduced by the state which has complicated or does not allow procedures permissible according to Sharia. Examining the law-making process, Cammack argues that, despite the failure to impose the compulsory enforcement of Sharia on the adherents of Islam,

[30] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 8; Sally Engle Merry, 'Law, Culture, and Cultural Appropriation', *Yale Journal of Law & the Humanities*, vol. 10, no. 2 (1998), pp. 575–603.

[31] Cammack, Young, and Heaton, 'Legislating Social Change in an Islamic Aociety: Indonesia's Marriage Law'.

Muslims have successfully defended traditional Islamic norms against ongoing legislative efforts to change the substance of Islamic marriage law.[32]

What has been happening in contemporary social practice? Based on his research on the social relations in a West Javanese regency, Stijn van Huis suggests that the modernization of the law on marriage-related matters has had a negative effect on the authority of *ulama*. In their efforts to safeguard their authority, they have been compelled to create a competing legal order and to challenge the authority of Islamic courts in respect of judicial divorce.[33] Also in the West Javanese context, Grijns and Horii have pinpointed the dilemmas and compromises which epitomize the contending norms on marriage and sexuality on the societal level. They emphasize that the influence of the conservative interpretation of Islam in controlling morality leads to the continuing practice of child marriage.[34] Platt, in the localized context of religious Lombok, puts forward a convincing case for arguing that the state law on marriage has been unsuccessful in superseding the so-called community-based law in the form of localized Islam and *adat*. In other words, social acceptance has prevailed over the state-based legitimacy. Legal processes in Islamic court do not always generate significant outcomes for defining the legal status of a wife.[35]

The case cited above reveals that Kyai Karim's reasoning about Islamic marriage crystallizes in the notion of "safeguarding Sharia". This entails at least two aspects: legalizing (sexual) relations and avoiding harm (sinful acts). However, the way Kyai Karim has been coping with this particular instance of polygyny deserves close attention, in particular making a detailed examination of the legal reasoning he used. In the interviews, Kyai Karim stated: "*Saya*

[32] Cammack, 'Islamic Law in Indonesia's New Order'.
[33] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 139.
[34] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns'.
[35] Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 36.

mengambil garis tengah pada kasus yang terjadi. Kalau mau disiplin ya pakai Syafi'i" (I took a middle ground to resolve the case. If you are religiously disciplined, you are bound to follow the Shāfi'ī). Despite the supremacy of the Shāfi'ī *madhhab* in the area, he was clearly admitting that the Shāfi'ī way had not yet produced a suitable model for settling this sort of problem. Therefore, he underscored the notion of the 'middle ground'. In his choice, he was stressing that this was not a typical case and therefore demanded an alternative legal settlement.

What he meant by 'middle ground' was moving away from the Shāfi'ī School to another *madhhab* in his search for a solution. One problem which loomed large was that the woman came to him accompanied by no one but her man/husband. It was not clear whether she had already obtained the consent of her familial *walī* (Indonesian, *wali nasab*). In an ordinary situation, the *wali nasab* is allowed to delegate his role of marriage guardian to another person. This process is known as *tawkil wali*. Furthermore, in addition to a *walī* in the settlement of a marriage contract, three other aspects are required to be present: the bride and the groom, the proposal and acceptance (*ījāb* and *qabūl*) and the pronouncement of the marriage contract (*ṣīgha*). Besides these most dominant factors, Muslim jurists have been locked in dispute about other aspects, namely: the dowry (*mahr*), witnesses (*shuhadā'*) and the marriage guardian (*walī*). In the view of Shāfi'ī and Mālikī jurists, all these have to be present. Only the Ḥanafī jurists argue that a marriage without the consent of a *walī* can be valid.[36] Interestingly, behind his decision to take the 'middle ground by Kyai Karim lies a particular stream of legal reasoning. His argument was constructed on the basis of a principle that, "if there is a danger that the woman might become mired in immorality (*fasād*), the judge has the right to marry her to a man of her own social status (*kufu'*)." This principle is founded on *Hadith* no. 1879, narrated by Aisha, from the collections of Ibn Mājah, which says, "Any woman whose marriage is not arranged by her guardian, her marriage is invalid, her marriage is invalid, her marriage is invalid. If (the man) has had intercourse with

[36] Susan A. Spectorsky, *Women in Classical Islamic Law: A Survey of the Sources* (Leiden/Boston: Brill, 2010).

her, then the *mahr* belongs to her in return for his intimacy with her. And if there is any dispute then the ruler is the guardian of the one who does not have a guardian."[37]

This case of 'illegal' polygyny resonates with the notion of the internal plurality of a law. Salim quotes Menski's concept of 'a quadrangle of law' which has been essential to the further development of the triangle of law introduced by earlier scholars.[38] An important factor in his model is not just that he reiterates the four elements of law (state, religion, society and international), but the factor which he terms 'plurality of pluralities'. It means that each element of a law has internal plurality too. This concept is very relevant in an examination of Kyai Karim's actions. By saying that he had "not only adhered to the state law, but also religious teaching", he showed a tendency to position the state law and Sharia in juxtaposition to each other. In his solution, Kyai Karim settled the case by exploiting the internal plurality of legal opinions in Islamic jurisprudence. He produced a creative legal reasoning in his attempt to shape his decision in accordance with Islamic law. In his juggling of the different legal practices, he was aware that a strict reliance on a particular *madhhab* was out of the question. His dilemma is exemplified by Bowen's remark that Islam needs to reshape its response in the variety of contexts is very apposite. In his opinion, a Muslim scholar has to engage in legal reasoning, thinking outside the *madhhab*, and consider the reinterpretation of Islamic norms, as well as the incorporation of *adat* into law.[39]

5. *Menghalalkan*: Marriage to Legalize Relationship

In this section, I present two case studies to demonstrate the fact that ideas about and practices in marriage are changing. An examination of the individual experiences of newly wed girls shows that Sumbersari

[37] Muḥammad ibn Yazīd Ibn Mājah, *English Translation of Sunan Ibn Majah with Commentary*, Vol. 3 edition (Riyadh: Darussalam, 2007), p. 78.
[38] Salim, *Contemporary Islamic Law in Indonesia: Shari'ah and Legal Pluralism*, pp. 25–6.
[39] Bowen, *Shari`a, State, and Social Norms in France and Indonesia*.

society is witnessing a diversity of forms in the increase in women's individual autonomy. Thanks to the improved access to formal education and the greater job opportunities for high-school graduates, girls now have far more room to exercise their agency in choosing their partner. Social mobility is emerging as a driving factor in changing outlooks on marriage and sexuality. Nevertheless, as shown in the first case, the *fiqh*-based concept of the authority of a marriage guardian is still paramount in defining a girl's sexual morality.

5.1. Aini: The Girl Loves, the Guardian Decides

In February 2017, my local collaborator took me to visit Aini's family. Aini, a twenty-one-year-old woman, was married in September 2011. After finishing Islamic primary school (*madrasah ibtidaiyah*), Aini studied in a prominent *pesantren* in a suburban area. Although the majority of *pesantren* have established *madrasah* with a graded-class system, not all of them have adopted a curriculum of general education. She preferred this *pesantren* because it runs a *madrasah* which combines both religious and secular subjects, adhering to the state curriculum. Unfortunately, she only managed to survive in this *pesantren* for a couple of months. She returned home and was sent to a local *pesantren* close to her village. This was also not a success. My collaborator said that Aini had actually wanted to study in an Islamic formal school, instead of in *pesantren*. Eventually she obtained the permission from her parents to continue at a *madrasah tsanawiyah* in the sub-district centre. Compared to her other classmates, she was older and looked more mature. Her parents were not really happy with this situation, not least because in that school Aini could interact not only with her fellow female students but also male ones.

In the meantime, a young man, Ulum, fell in love with Aini. Ulum is three years older. He had graduated the same school but by this time was in the second year of vocational high school (*sekolah menengah kejuruan*). Aini reciprocated his feelings. She said that they pursued a *pacaran* (courtship), but never met in private (*kencan*). It was not long before Ulum proposed that she marry him but said that he was prepared to wait until after she completed her schooling. Quite unexpectedly as far as Aini was concerned, Ulum's parents suddenly

came to see her parents, proposing that she be be Ulum's wife. The proposal took her parents by surprise, even though a situation like this is not unique to their tradition. Aini's parents happened to be aware that their daughter already had a special relationship with a young man. The parents were in dilemma. The fact that the children were already emotionally attached loomed very large in their minds. Adding to the confusion was the custom that rejecting a marriage proposal is morally humiliating in the eyes of their society. There was a fear that their children would become too intimately involved and might possibly bring some form of social dishonour on the family. The father decided to accept the proposal and allow his young daughter to become engaged. A couple of months later she married and stopped school because the school refused to accept a married student.

A graduate of a *pesantren*, she now spends her days at home as a housewife, raising a three-year-old daughter. I talked to her, in Javanese with Madurese accent, about her experiences. In a subdued voice, Aini expressed her sadness about dropping out of secondary school. But this did not mean that she was not happy. When I asked if she was happy with the marriage, she smiled and acknowledged with pleasure she was married to a man of her own choice. She admitted that she was glad that the *pesantren* had taught her the values of *ikhlas* (sincerity) and *syukur* (gratitude). In this instance, Ulum and Aini were already acquainted with each other. Although the marriage ceremony was thrust upon them too fast, Aini was happy to be able to marry the man of her choice.

Koentjaraningrat remarks that the *santri* religious system provides the individual with a basic feeling of security through its concept of an intensive personal relationship with God.[40] This observation still seems pertinent to Aini's situation. I asked her opinion about her marriage being arranged by her parents and she responded as follows: "We had been developing feeling of closeness (*dekat*) for a couple of months. Perhaps you could call it *pacaran*, but

[40] Koentjaraningrat, 'Family and Religion in Indonesia', *East Asian Cultural Studies*, vol. 13, no. 1/4 (1974), p. 67.

it was not the usual sort. The two of us never met together alone. *Pacaran* is really restrictive, but *kencan* (meeting in private) is considered out of the question and taboo." Again, Islamic marriage is not perceived merely as a contractual tie. For Muslims in Sumbersari or elsewhere for that matter, marriage serves more as an act of worship (*ibadah*) which, according to the Prophetic tradition, completes one half of one's religion. It unites the physical (*lahir*) and spiritual (*batin*) forces which lead to a husband and a wife committing themselves to each other body and soul for the sake of God.

In Aini's case, it was unimportant to her that her parents should have sought her approval when the marriage proposal from Ulum's family was accepted. Aini, therefore, never expressed her agreement or rejection of the parent's decision. Even had she refused in view of the traditions of her society, as her guardian her father would have exercised his right to coerce her into marriage. Fathers, or other male guardians, play a decisive role in controlling their daughters' behaviour[41] and in determining the validity of a marriage contract.[42] The 1974 Indonesian Marriage Law requires the consent of both spouses. Both the bride and the groom are required to sign a letter of consent (*surat persetujuan mempelai* or N3 form) to be submitted to the marriage registration office as one of the obligatory documents to be handed over before a marriage ceremony can be registered.

Despite the decision made by her father, Aini's marriage reveals an ambivalence which necessarily suggests the evolution of sexual norms in a traditional community. Aini herself found her spouse, but her father decided the timing of the marriage. The younger generation in Sumbersari is showing a greater tendency to choose their own husbands and wives, but even so the timing of the ceremony is not always up to them. During the last decade, the result of increasing access to and the extended duration of formal education, schools have

[41] Ann Black, Hossein Esmaeili, and Nadirsyah Hosen, *Modern Perspectives on Islamic Law* (Cheltenham: Edward Elgar Publishing, 2013), p. 129.
[42] Muhammad Khalid Masud, 'Gender Equality and the Doctrine of Wilāya', in *Gender and equality in Muslim family law: Justice and ethics in the Islamic legal tradition*, ed. by Ziba Mir-Hosseini et al. (London: I.B. Tauris, 2013), p. 12.

been increasingly providing a space in which the younger generation can meet prospective partners. Girls and boys are not separated in schools or classrooms, allowing them the freedom to interact with each other. As a consequence, young people, especially girls, are becoming more exposed to the notion of mutual love (*la padeh senneng*). This ideal of mutual love has recently become more instrumental in the shaping of local marriage behaviour; the sexuality of the young is no longer a familial affair.

Aini's mutual love demonstrates that a woman's increasing autonomy in the choice of marriage spouse does not necessarily result in a more egalitarian view of the gender relationship in a family. When I asked about her understanding of gender relations in Islam and how this affected her marital life, she was of the view that a devout Muslim wife ideally acknowledges her husband's leadership and accepts his sexual advances.[43] This outlook is still a strong reflection of the conservative understanding of gender relations in Islam and is the one disseminated in *pesantren*. Only a small number of *pesantren* have proposed a newer idea of gender equality.[44]

In their views of what makes a marital relationship, Aini and other students in *pesantren* are familiar with *'Uqūd al-lujayn fī bayān ḥuqūq al-zawjayn* by al-Nawawi (AD 1813-1898), a textbook which claims to uphold patriarchal ideas of gender relations.[45] The book is not part of regular curricula, but is usually read during the month of Ramadan when people come to listen to it voluntarily. There are four chapters in the book. The first two chapters address the rights and obligations of wife and husband in a family. The first chapter sets out a husband's obligations towards his wife, namely: treating her well, providing a

[43] Nina Hoel and Sa'diyya Shaikh, 'Sex as Ibadah: Religion, Gender, and Subjectivity among South African Muslim Women', *Journal of Feminist Studies in Religion*, vol. 29, no. 1 (2013), pp. 69–91.

[44] Bianca J. Smith and Mark Woodward, 'Introduction, Decolonizing Islam and Muslim feminism', in *Gender and power in Indonesian Islam: leaders, feminists, Sufis and pesantren selves*, ed. by Bianca J. Smith and Mark Woodward (London and New York: Routledge, 2014), p. 10; Husein Muhammad, *Fiqh Perempuan: Refleksi Kiai atas Wacana Agama dan Gender* (Yogyakarta: LKiS, 2001).

[45] Srimulyani, *Women from Traditional Islamic Educational Institutions in Indonesia: Negotiating Public Spaces*, p. 125.

livelihood and dower, as well as guiding her through the maze of rituals and wifely obedience to the husband. The second chapter describes a wife's obligations to her husband which include taking good care of him, submitting her body to him, staying at home while the husband is away and keeping modestly covered at all times (*aurat*). Another book popular among the *pesantren* community is *Qurrat al-'uyūn bi-sharḥ naẓm ibn Yāmūn fī adāb al-nikāḥ* by Muḥammad al-Tihāmī which deals with sexual morality. This book encourages the importance of marriage as a means to preserve morality and establish a lineage. It also addresses a number of issues related to ethics related to sexual relations, such as reciting prayers, keeping the body clean and the proper times and places in which to have sexual intercourse.

Now, Aini stays at home, doing the housework and taking care of the children. Nevertheless, while her husband is working outside the home, she can use her free time in the morning to undertake some sort of economic activity which could generate a small amount of money. She, as do other neighbouring mothers, embroiders embellishments for Islamic dresses. The money she makes is enough to give small daughter some pocket money (*uang jajan*).

5. 2. Marry Me! Marriage and Religious Piety

In the first months of 2007, I made the acquaintance of Iin's family. Socially, it can be considered middle-class. The father works in a private factory and the mother runs a small green grocery stall (*warung sayur*). Iin was twenty-one when I first met her. She had never boarded in a *pesantren*, but had attended state Islamic schools instead. As is a common practice in her circles, she had extended her studies of Islam at an informal *madrasah diniyah* just across the way from her house. After completing *madrasah aliyah* (Islamic senior high school) in 2014, she decided not to continue her studies but to join the work force. Her mother told me that Iin had been encouraged to continue her studies at university, but she had not been tempted by the prospect. Iin began by working in a restaurant in the town of Bangil where she met a young man, Alim, at the end of 2015. He is three years older than Iin and is originally from her neighbouring village. He has been working as a factory hand in the industrial centre known as PIER

(Pasuruan Industrial Estate Rembang), in which hundreds of major transnational companies operate.

As of September 2015, they have been in a serious relationship. In contrast to Aini, because Iin worked outside the home, she has had ample opportunities to meet Alim in private. In view of her situation, Iin acknowledged that she did not want to have a long period of courtship with Alim. Reasons derived from sexuality, public morality and certainty (*kepastian*) appear to have shaped her outlook. She believed that Alim was the man of her destiny (*juddhu*) but she feared that their relationship would not end in marriage. She therefore asked Alim to marry her as soon as possible. In April 2016, Alim's family came to Iin's parents to formalize the betrothal (*lamaran*) which would signify Iin's status as an engaged woman. After this Iin left her job saying that she needed to prepare for wedding in August, a few months after.

Iin articulated her ideas on marriage as follows:

> "I thank God that my parents allowed me to marry a man of my own choice. I hope God blesses us in this marriage. This marriage will safeguard me from [the perils of] pre-marital sex. I just want to be a good wife to him and a good mother to my children. We don't have to worry about how we are going to feed our family. If our intentions are good, God will help us."

The brief sketch of Iin's marriage reflects the changing attitudes towards marriage among young local Muslim females in Sumbersari. It seems obvious that the dominant power of the older generation in the choice of marriage partners and the timing of the marriage which prevailed in the past is now gradually being offset by the girls' agency. A girl's consent to the marriage has been emerging as an important factor. The Indonesian Marriage Law, Article 7 (1), stipulates that girls can consent to marriage from the age of sixteen, while for boys the age of consent is from nineteen. However, the law does make an exception for Muslims by stating that the permission of an Islamic court can serve as a legal basis for marrying girls and boys under sixteen and nineteen respectively. Their consent to the marriage is dependent upon the

consent of their male guardians if they are under the age of twenty-one. This means that the individual autonomy of the girls is only really acknowledged if they are already older than twenty-one.

Furthermore, Iin's views on what marriage means to her have been formulated with Islamic doctrines on sexuality and morality in mind. She proposed an array of arguments related to sexuality, saying that, for instance, marriage would preclude damaging interaction (*pergaulan rusak*) and allay her concerns about premarital sex. Marriage was the only way open to her to make their sexual relationship lawful (*menghalalkan hubungan*). Of course, this was not the only reason. Playing a big part in her thoughts were the ideas of founding a lineage (*namba ketoronan*) and complying properly with worship (*nyampornaagi ibedeh*). Many *Hadith*s state this value: marriage completes one half of one's religion; it is part of a person's *Sunna*; one of the three persons entitled to the help of the Almighty is he or she who marries with a vision of preserving their chastity. These ideas have always featured prominently in the chapters on marriage in the classical *fiqh* treatises and have been a constitutive element of the worldview of Muslims who have been deeply influenced by the *pesantren* culture.

Muslim feminists have explicitly encouraged the interpretation of sexuality and sexual interaction enshrined in the Islamic texts, as an essential part of individual experience and as the cultivation of spiritual awareness.[46] In spite of framing marriage as a means to avoid sinful acts, it is also indisputably regarded as an expression of piety.[47] Over the past two decades, marriage as a step on the right road towards piety has been encouraged as a way to cultivate a pious self among Muslims who have not enjoyed an education in traditional Islamic institutions.[48] Scholars connect this phenomenon to the rise of

[46] N. Hoel, 'Engaging Islamic Sexual Ethics: Intimacy, Pleasure and Sacrality', *Sexualities*, vol. 18, nos. 1–2 (2015), p. 84.
[47] Asma Barlas, *'Believing women' in Islam: Unreading patriarchal interpretations of the Qur'an* (Austin, TX: University of Texas Press, 2002), p. 153.
[48] Rozario, 'Islamic Piety against the Family: From "Traditional" to "Pure" Islam'; Rachel Rinaldo, *Mobilizing Piety: Islam and Feminism in Indonesia* (New York: Oxford University Press, 2013).

religious piety in this secular world. Recent trends in the anthropological study of Islam have suggested that modernization does not necessarily result in secularization or religious desacralization,[49] but instead gives rise to the proliferation of multiple modernities.[50] This change has generated an increasing demand for the re-advancement of religious and traditional institutions in a whole gamut of temporal sectors.[51]

Religious piety is also closely related to individual agency. Smith-Hefner, for instance, has underscored the changes among the urban, educated Muslim Javanese young people who have been influenced by the rise in the awareness of individual autonomy and the expansion of their own increasing agency. Even the agency of women has been expanding and opened up a range of possibilities. This has allowed them to navigate their own actions in their quest to find different solutions as long as these sustain their ideals of a better life. In this respect, Schielke has underscored that, "Muslims' engagement with their religion is neither the outcome of blind adherence, nor the result of coercion, but an active and dynamic process of engagement with ideals of good life and personhood."[52]

6. Conclusion

In this chapter, I have discussed the ways people in religious Sumbersari mould the practices associated with marriage. Despite the homogenous tradition of Islam in the area, the narratives indicate the internal heterogeneity of the relationship between agency of the actors involved, cultural norms and prevailing social structure in their

[49] Peter L. Berger, 'The Desecularization of the World: A Global Overview', in *The Desecularization of the World: Resurgent Religion and World Politics*, ed. by Peter L. Berger (Washington: Ethics and Public Policy Center, 1999), p. 11.
[50] Timothy P. Daniels, 'Introduction: Sharia Dynamics and the Anthropology of Islam', in *Sharia Dynamics: Islamic Law and Sociopolitical Processes*, ed. by Timothy P. Daniels (Cham: Springer International Publishing, 2017), p. 14.
[51] Kalanges, *Religious Liberty in Western and Islamic law: Toward a World Legal Tradition*, p. 4.
[52] Samuli Schielke, 'Second Thoughts about the Anthropology of Islam, or How to Make Sense of Grand Schemes in Everyday Life', *ZMO Working Papers*, no. 2 (2010), p. 5.

selection of whom to marry. I suggest that, in all social categories, the ideas of an ideal marital spouse are conceptualized within the set of localized ideals of chastity (*kesucian*), correct behaviour (*apik*) and good fortune (*mompong*). These notions culminate in the identity of what it is to be a *santri* (people of a *pesantren*). As we have seen, these values are certainly present in the case of Munir and Ulfa. In their pre-marriage process, we are given to understand that the *pesantren* was an important factor in the maintenance of the *fiqh*-based orientation towards marriage. In other words, being a *santri* signifies the purity of a girl and her high moral principles. In Sumbersari, the implementation of these ideas in marriage and remarriage are still dependent on the roles of the *pengarep* (traditional marriage-broker) and *kyai* (religious leaders), although the role of the latter might be superseded.

Assuming the leading role in facilitating the communication between the two families concerned, the *pengarep* are very important to families noted for the religiosity and those whose daughters have been educated in *pesantren*. *Pengarep* help to protect the reputation of the family and oversee the preservation of social honour. Nor is their role confined to first marriage, remarriage has become an arena in which *pengarep* exercise their influence too. As shown in the case of Kulsum, who is from a lower-class family, we see how cultural norms such as *mompong*, *juddhu* and *apik* are also intertwined with religious rationales. Kulsum's out-of-court divorce suggests the overriding importance of social acceptance compared to formal legal recognition. Likewise, practices among middle-class families also show the importance of this role. Fahim was married-off after her parents were visited by a *pengarep*. Her husband is a *santri* from a middle-class family and therefore a good catch. People were very much afraid that the man would be married to another woman (*mompong*) if the marriage proposal was not accepted. This same reasoning applied in the case of Fahim's sister.

Another key actor in any marriage is *kyai*. *Kyai* are important in resolving the legal issues which intersect with religion-related sexual morality. *Kyai* maintain their roles in the production of an Islam-based

legal norm which exercises control over sexual morality and this sometimes clashes with the state legal norm. In addition, divergent opinions in traditional *fiqh* doctrines have been essential to the construction of a legal reasoning which ties in with people's interests. The ability to exercise legal reasoning has become a fundamental instrument by which *kyai* can maintain his legitimate authority in the society. Because of the involvement of *kyai*, marriage has been, and is still, an effective tool by which to tackle the problems of religious morality and female sexuality.

Increasing participation in formal education and the rise in women's mobility have challenged these tried and tested practices.[53] Formal schools now provide a space in which young people can meet prospective partners. Mutual love is becoming more important. Because they now have more room to exercise agency in the selection of a possible spouse, the role played by *pengarep* is a diminishing one. Nevertheless, for girls the finding a beloved partner is still not the crucial factor in deciding when they marry. In many cases, the decision of the timing a of marriage is still firmly subject to the parents' authority because they are still the people supposed to exercise control over their daughter's sexual morality. Parents usually refer to this obligation in terms of preserving the social honour of a family. Even when women are in the position to articulate their consent to a marriage, they still need to depend on religiously inspired principles in order to make sense of their choices.

In Pasuruan a woman who divorces informally (out of court) and wants to remarry will experience no problem in finding a *kyai* willing to marry her to a new spouse, despite the absence of a marriage certificate, an attitude found in other parts of Indonesia too, like in Cianjur, West Java.[54] This suggests that religious norms still prevail over other legal norms, especially in remarriage. Furthermore, with the help of their traditional stalwarts, the *kyai* and *pengarep*, the villagers in Pasuruan are managing to continue to observe their

[53] Gavin Jones, 'Which Indonesian Women Marry Youngest, and Why?', *Journal of Southeast Asian Studies*, vol. 32, no. 1 (2001), pp. 67–78.
[54] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 271.

community-based legal system, thereby forestalling the heavy involvement of state institution.[55] Platt has underlined the dominant influence of community-based law which saps the efficacy of the Marriage Law.[56] The narratives in this chapter have revealed some of the dilemmas and compromises which must be made on different levels in society as the result of the diversity of values on marriage and family.

In the next chapter, I have analysed the relationship between the state official functionary in charge of marriage registration (*penghulu*) and their informal village counterparts (*modin*), so long embedded in villagers' marriage ceremonies. In its attempt to come to grips with the position of the *penghulu* and the KUA, this chapter adopts the concept of 'state-in-society' approach. It will also present an attempt to investigate the ways local people negotiate their own interests when dealing with a regulation of the marriage fee newly introduced by the government.

[55] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns', p. 12.
[56] Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 149.

CHAPTER 5

Registering Muslim Marriages: *Penghulu, Modin* and the Struggle for Influence

"Ancaman saya begini: Saya turun jabatan atau buku nikahnya saya coret. Saya tidak mau instansi pemerintah dilecehkan."

(This is my warning: I resign or I cross out the marriage certificate. I do not want a government institution humiliated.)

Pak Yusuf, the head of a KUA office in Pasuruan

1. Introduction

It was at the end of January 2017. I stopped my motorcycle as I passed the Sumbersari grand mosque in Pasuruan. I cast my eye over a green building next to the mosque. The building looked dirty, the front garden was untidy, but the entrance gates stood open. A small signboard reading 'Kantor Urusan Agama' still hung on the fence. The leaves of a mango tree in the corner of the garden drooped down over some parts of the signboard. I was hesitant but finally decided to approach a young man sitting at a *warung* (food stall) directly opposite the mosque. I asked him if that building was the Office of Religious

Affairs (Kantor Urusan Agama, henceforth referred to as the KUA)[57] for which I was searching. The young man told me that the building had been unoccupied for months. The office had in fact been moved a couple of hundred metres to the south, taking over a building belonging to the sub-district branch of the NU.

The following day, I visited the 'new' office and met its highest official, Pak Yusuf,[58] the *kepala* (head) of the KUA, who simultaneously serves as the Pegawai Pencatat Nikah (PPN, the official marriage registrar). His position is socially acknowledged as the equivalent of *penghulu* or *naib*. Pak Yusuf briefly explained that they had had to move because major parts of the old building were in need of renovation. He said that the Provincial Office of Religious Affairs has approved a proposal for reconstruction. However, he did not know much about the cadastral history of the land as he had only been head of this KUA since October 2014. He resides in an area close to Surabaya, the capital city of the province of East Java, which involves a journey of one hour by motorcycle to reach the office. On those days on which the number of marriage ceremony[59] rises, he has to spend the night in the office to be able to attend the ceremonies held early in the morning next day. During my fieldwork, he often invited me to be his guest at the office too. I was very happy to accept his offer as it also enabled me to have extensive chats with Pak Rohmat, one of the local officials whose house is just a few dozen metres from the office. Pak Rohmat is a non-tenured employee (*pegawai honorer*) who has been affiliated with the KUA for more than twenty years.

Pak Rohmat explained that, ever since the KUA was inaugurated in 1961, it had rented the house next to the mosque. In the early 1990s, the government had allocated land near the sub-district health centre

[*] An earlier version of this chapter has been published in *Al-Jami'ah: Journal of Islamic studies* vol. 57 no. 2 (2019): pp. 397-424.

[57] The KUA is a state body at the sub-district (*kecamatan*) level which is responsible for the administration of Muslim marriages.

[58] All names are pseudonyms.

[59] To avoid misunderstanding, herein marriage ceremony refers to *akad nikah* or *ijab kabul*, the stage at which the woman's guardian in marriage offers the bride to the groom who then declares his acceptance.

for the construction of a new KUA office. Some local religious elites who knew about it fiercely opposed to the plan. They argued that the KUA, whose task is to deal with Islamic affairs, was ideally situated alongside a mosque. In the end, the government cancelled the construction project. Later, after the intervention of religious leaders, the owner of the (rented) house was prepared to exchange his property for the allocated land. Since then, the house has been government property, even though the exchange was carried out unofficially. As a local villager, Pak Rohmat has been assigned the job of co-operating with village authorities to finalize its legal status. He is happy to take on this assignment, arguing "it's the source of my income".

This narrative gives a very good impression of how informal religious leaders exercise their power in the (re)making of a state institution.[60] The resistance to the construction of a new building makes is quite clear that a state institution cannot really be isolated from its social context. Referring to similar situations, Davis argues that, "informality is both a mirror and a determinant of the state's formal reach".[61] Moreover, it is also obvious that, in the perception of the religious leaders, the KUA is more than a formal institution involved in the administration of marriage. Rather, the KUA officials, not least the *penghulu*, the KUA functionaries who deal specifically with marriage, are also assumed to possess religious authority. This perception is based on the reasoning that the task of the *penghulu* is to conduct a marriage ceremony according to Islamic norms or, at least, to validate that a marriage ceremony has been performed in accordance with Islamic rules and can therefore be legally registered.

This chapter examines the fact that a state agency like the KUA is unlikely to be detached from the social forces with which it engages.[62]

[60] Adam White, 'Introduction. A State-in-Society Agenda', in *The Everyday Life of the State: A State-In-Society Approach*, ed. by Adam White (Seattle: University of Washington Press, 2013), pp. 1–12.
[61] D.E. Davis, 'Informality and State Theory: Some Concluding Remarks', *Current Sociology*, vol. 65, no. 2 (2017), p. 317.
[62] Christian Lund, 'Rule and Rupture: State Formation through the Production of Property and Citizenship', *Development and Change*, vol. 47, no. 6 (2016), pp. 1199–228.

Klinken and Barker have emphasized the importance of "the study of the state in relation to the broader social context in which it is embedded".[63] Bearing this in mind, I would like to draw attention to a wider debate about the state in society. Hence the emphasis in this chapter lies on the ways *penghulu* negotiate their authority in a society in which the influence of informal religious authorities is dominant. It elucidates how the KUA and its officials on the subdistrict level shape and implement the rules on marriage registration and analyses how they interact with the different actors in the local society.

On the basis of my observations of the everyday practice of the KUA in my research field, I want to suggest that, given their situation, the KUA officials have to negotiate their authority in a variety of contexts. They personally considered that, for the sake of stability, it was important to enhance their good relationship with religious leaders and local elites. It seems that officials like Pak Rohmat, who is a local villager, play an important role in bridging relations between the KUA and the local elites, including *modin* (informal religious officials in charge of marriage on the village level). Moreover, considering the principle of the 'dual validity' of Muslim marriages, that is, the legal obligation of marriage registration and the religious nature of the marriage ceremony, the flexibility of KUA officers in interpreting and implementing the rules is the key to the success of state-imposed marriage registration.

Unquestionably, the uneasy relationship between the religious and administrative aspects of marriage places *penghulu* on the horns of a dilemma. This quandary is actually not a new phenomenon. When we trace the history of *penghulu* beginning in the colonial era, we find this problem crops up time and again. Researchers have argued that, long before Independence, state-promoted *penghulu* found themselves poised at a crossroads between the interests of Muslim leaders and

[63] Gerry van Klinken and Joshua Barker, 'Introduction: State in society in Indonesia', in *State of authority: the state in society in Indonesia*, ed. by Gerry van Klinken and Joshua Barker (Ithaca, NY: Cornell University, 2009), p. 5.

those of the colonial government.[64] It has been the fate of *penghulu* to be stereotyped by religious leaders as people whose Islamic education left much to be desired.[65] Discussing their contemporary delicate balancing act, Nurlaelawati has remarked that the KUA officials, including *penghulu*, show an inclination to co-operate with *ulama*, tending to position themselves as *ulama* rather than as state officials. Examining their role in divorce, she found that *penghulu* have assumed a role as an intermediary between the *ulama* and the religious courts. Even more interesting is that, as she suggests, the KUA officials in particular areas adopt an ambivalent position towards judicial divorce when they go ahead with the marriage registration of married couples who claim to have been divorce but fail to present a divorce certificate.[66]

This chapter asks a fundamental question: In what ways do *penghulu* maintain their authority? This resonates with other questions, such as: What language do they use in their struggle for power in society? What is people's attitude towards them? What roles do *modin* play? How can we explain from observing the everyday interaction between people, *modin* and *penghulu*, theoretically? By posing these questions, this chapter aims to scrutinize the (political) position of *penghulu* and the KUA officials in society at large. It then addresses the matter of how *penghulu* seek influence in navigating the recent introduction of marriage in accordance with the state laws.

This chapter is composed of six sections. Following this introduction, I briefly elaborate the foundational framework on which this chapter stands. The next section seeks to elucidate the social context in which the state is supposed to exercise its legal authority. From her I go on is to address the presence of state institutions in order to introduce them into the core discussion. This involves examining the different attitudes of KUA officials. Later, I expand my discussion

[64] Hisyam, *Caught between Three Fires: The Javanese Pangulu under the Dutch Colonial Administration, 1882-1942*.
[65] *Ibid.*
[66] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 189.

of the image with an analysis of the recent trend in marriage registrations. The sixth section examines the interaction between the *penghulu* and entrenched social forces in the making of marriage practice.

2. Marriage Registration and the State-in-society Approach

Pak Yusuf's words which begin this chapter indicate that the state's legal authority over marriage is never free of challenges. Marriage has been, and still is, subject to competing authorities.[67] To extrapolate the complicated position of state officials like Pak Yusuf in society and its relationship with informal authorities,[68] this chapter has borrowed the conceptual framework of the 'state-in-society'.[69] By and large, this approach has been developed in response to the fact that the modern world is principally shaped by the authority of the state through the implementation of the force of its formal rules. However, in practice how these rules are determined by "those who are supposed to enforce them" and by "those who are supposed to obey them" is not cut-and-dried.[70] This situation inescapably gives rise to a wide range of competing authorities and discourses. Given the circumstances, it seems impossible to be able to avoid the necessity of examining the compound relationship between the authority of the state and everyday social actors in order to comprehend their multiple narratives and political activities as reciprocal processes which constitute one another. The relationship between them is seen as a dialectical process.

[67] Scott, 'Social Norms and the Legal Regulation of Marriage', p. 1903.
[68] Recent studies of the state and society have considered informality an analytical point of departure for theorizing governance, citizenship and social order. Davis, 'Informality and State Theory: Some Concluding Remarks'.
[69] Among others, Joel Migdal is one of the leading scholars on the subject. His book "State in Society" published in 2001 has been fundamental in providing insightful viewpoints to deal with the enquiry into the making and the remaking of the state in the face of social realities. See Joel S. Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another* (Cambridge: Cambridge University Press, 2001).
[70] White, 'Introduction. A State-in-Society Agenda', p. 3.

This 'state-in-society' approach leads to a new, distinctive definition of the state. It revisits that proposed by earlier scholars like Max Weber who conceptualized the state on the basis of its institutional nature as a powerful organization which allows it to resort to coercion.[71] This longstanding understanding of the state is encapsulated in Weber's commonly cited definition "a state is a human community that (successfully) claims the *monopoly of the legitimate use of physical force* within a given territory".[72] At the core of this definition clearly lies the notion of domination by the means of physical force within the borders of the state's territory. Migdal has tried to see this domination as neither centred nor single, exclusively occupied by a formal organization. Instead, he has come up with the idea of "society's multiple arenas of domination and opposition".[73] He also suggests that the state is a power which "embodies an ongoing dynamic, a changing set of aims" as the consequence of the engagement of social forces.[74]

In the study of Islamic law and society, this 'state-in-society' approach necessarily brings me back to a number of works which have suggested the so-called cultural shape of state activity. One is the seminal work by Rosen on the practices of the *qadi* in the context of Islamic law and Moroccan social and cultural life.[75] After his examination of the local *sharia* court records (*sijill*) in the town of Sefrou, Morocco, he found that the oaths sworn and the use of professional witnesses are not based on the exact reality; they are the outcome of the *qadi*'s personal construction which is constructed through a process of negotiation. This effort is made to establish the judicial facts which will make it possible for the *qadi* to make decisions.

[71] Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 111.
[72] Weber, 'Politics as a Vocation', p. 78.
[73] Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 99.
[74] *Ibid.*, p. 112.
[75] Lawrence Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society* (Cambridge: Cambridge University Press, 1989).

Migdal offers a dual-aspect definition of the state. He states: "The state is a field of power marked by the use and threat of violence and shaped by (1) *the image of a coherent, controlling organization in a territory, which is a representation of the people bounded by that territory*, and (2) *the actual practices of its multiple parts."*[76] The first aspect, the state's image, assumes the state as a dominant and autonomous entity which controls the direction taken by the given society. This is also bound up with how the state has become an integral part of everyday social relations; the explanation of why it continues to exercise a certain form of authority.[77] The second aspect, the practice, connects with the ways the state's image is either reinforced or weakened by its own officials and societal agencies. In short, it focuses on the variety of practices which influence the sharp demarcation between the state and the society.[78] It allows us to see how state authority is negotiated by different actors.

Using this framework, I have come to perceive Muslim marriage registration as a political activity which inevitably involves interaction between the state agent and everyday societal agencies. My starting-point is an examination of the development of registered marriage from which I move on to analysing the practices of *penghulu* and of the KUA, paying particular attention to the image portrayed. In my construction of this the image, I analyse the internal dynamics within the KUA to understand how *penghulu* maintain the position of the KUA. I focus on the recent trends in the performance of the marriage ceremony and marriage registration which provide the arena in which different authorities continue to contest.

3. Building an Internal Synergy

This section analyses the behaviour of KUA officials and their interaction in the everyday running of the KUA. However, before going

[76] Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, pp. 15–6.
[77] White, 'Introduction. A State-in-Society Agenda', p. 13.
[78] Migdal, *State in Society: Studying How States and Societies Transform and Constitute One Another*, p. 20.

further, it is important to explain who are employed in the KUA. The positions in the KUA can be divided into three categories, namely: the head (*kepala*), officials specifically working on marriage (*penghulu*) and the administrative staff. In the KUA Sumbersari, these positions are occupied by four persons: two are civil servants, while the other two are non-tenured local positions. The office itself occupies a two-storey building. The ground floor consists of one big hall and four small rooms. The hall houses two desks, one in the front and one at the back, separated by an old suite of sofa and armchairs in the middle.

The principal civil servant is Pak Zaki. He occupies the front desk, the registration counter. Previously Pak Zaki was as a teacher in a state Islamic school in the town Bangil. In 2014, he decided to leave the school to become a KUA official. "I wanted to feel more relaxed in my new position", Pak Zaki said. He is responsible for keeping the *buku register* (registration book). This book contains the personal details of the brides and the grooms, date of registration, the proposed date of the marriage ceremony, the bride's guardian and where the marriage ceremony will take place. Perhaps he is right when he says that his new occupation is less hectic than his previous job but, in the process of marriage administration, Pak Zaki's desk lies at the heart of all the procedures. On a practical level, he is the one who verifies the accuracy of the data (name, age and the guardian of the bride).

Pak Yusuf occupies the back desk. He began his career as a civil servant in the Office of Religious Affairs in Pasuruan in 1985. Since then he has been continuously employed as a KUA official, moving from one office to another across the region. He is neither the product of an Islamic university nor did he graduate from a *pesantren*. Instead, he attended a vocational high school (s*ekolah menengah kejuruan*) in the 1970s and later studied economics obtaining the degree of Sarjana Ekonomi (SE, BA in Economics). In the past, it was possible for an administrative official in possession of this degree qualified to be promoted to the rank of a structural official (*pejabat struktural*), that is, the *kepala* of a KUA. Pak Yusuf achieved this at the end of 2004. In this position, Pak Yusuf fulfils the duties of a marriage registrar (PPN, Pegawai Pencatat Nikah).

In the past, the *kepala* of a KUA was not always *penghulu*, although *penghulu* could hold a structural position (*jabatan struktural*) as a *kepala* KUA. In Pak Yusuf's case, he is the *kepala* but he is not a *penghulu*. Nevertheless, because the office does not have its own *penghulu*, he automatically assumes the function of *penghulu*. This kind of situation can sometimes lead to problems if the *kepala* of a KUA are not well versed in the religious competencies expected of him by the society. This is the reason the government has changed the regulation governing position of a *kepala* of KUA. Currently, the *kepala* of a KUA must be a *penghulu*.

The fact that Pak Yusuf has to act as *penghulu* has emerged as a crucial issue in Sumbersari. Local people have problematized his educational background because he had never attended an Islamic school. Pak Yusuf has also not been adequately educated in Arabic. Importantly, particular societies, as in Sumbersari, demand the use of Arabic as well as that of the local language in the performance of a marriage ceremony, including the marriage sermon (*khutbah nikah*), the offer (*ijab*) and its acceptance (*kabul*). The people believe that the use of Arabic imbues the marriage ceremony with additional blessing. This demand definitely requires that a *penghulu* possess well-honed skills in reciting Quranic texts or proficiency (*fasih*) in reciting prayers in Arabic. Therefore, it is quite common for local people to ask a *modin* or another religious leader, rather than the *penghulu*, to conduct the ceremony.

Some wooden-framed posters hang on the wall near Pak Zaki. At the top, a big poster announces the regulations determining the mechanism of the marriage registration fee which stresses the difference between *nikah di KUA* (marriage in the KUA) and *nikah di luar KUA* (marriage outside the KUA). Beneath it, a poster reproduces a *hadith* on the roles of the marriage guardian and witnesses in marriage contract. This *hadith* says *lā nikāḥa illā biwaliyyin wa shāhiday 'adlin* (no marriage except with a guardian and two non-discredited witnesses). It also contains a description of the list of who can be a guardian and that they can come only from paternal side. If the bride's father is absent, there are still twenty guardians who are

eligible to replace him, ranging from grandfather to the oldest son of a paternal great-uncle.

A couple of metres from Pak Zaki's desk is the room in which the two non-tenured officials do their work. Their position is commonly called *sukwan,* derived from the word *sukarelawan* (voluntary). They are local natives, Pak Rohmat and Pak Hamid. Pak Rohmat's principal task is organizing the marriage documents. As his house is close to the office, he has also been assigned the duty of handling the day-to-day running of the KUA. Every morning, before office hours, he opens the door and cleans the floor. In the evening, he comes back to the office to make sure that everything is secure. Pak Rohmat is also responsible for recording the personal details of couples wishing to marry in the *buku bantu register* (back-up registration book). The difference between this book and the *buku register* is that that kept by Pak Zaki contains the column which mentions the number of marriage book (*buku nikah*) or the copy of marriage certificate (*kutipan akta nikah*) to given to the married couples. Pak Rohmat also takes charge of writing their details down in the *buku nikah,* which each couple receives. The one with a green-cover is for the wife (*buku nikah istri*), while the red-brick cover is for the husband (*buku nikah suami*). Pak Hamid's work is to manage the electronic data. Since 2013, the data of the married couples have been managed electronically. The system is called SIMKAH (Sistem Informasi Manajemen Nikah). Below is a diagram of the structure of KUA Sumbersari.

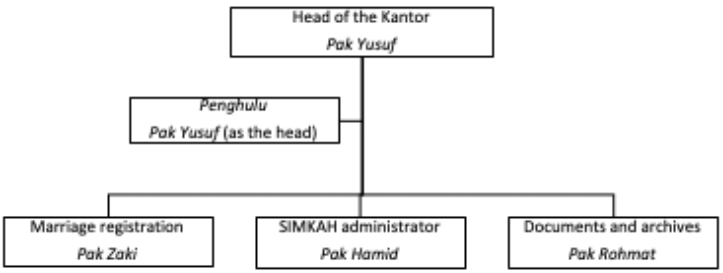


Figure 5.1. Structure of the KUA Sumbersari

Both Pak Rohmat and Pak Hamid are from families widely respected in religious circles who have played a considerable role in the development of the institution. In 1992, after finishing senior high school, Pak Rohmat took the position of his older brother who had just been promoted in the civil service rankings. Currently, his brother is serving as *penghulu* in another sub-district. When he took over his brother's position, Pak Rohmat shared the same ambition, to be a civil servant too. Therefore, some years ago he took a bachelor's degree in Islamic education which he hoped would accelerate his promotion. However, so far this promotion has eluded him. Pak Hamid is a local villager who is a graduate of a prominent *pesantren* in the town which has not adopted secular education. Local people regard him more as an Islamic teacher (*ustadz*) than as an official in a state institution. He heads an informal Islamic school (*madrasah diniyah*) in a *pesantren* which belongs to his uncle, one of the top leaders of the local branch of the NU. As his hands are full with these activities, he does not work at the KUA full time. Pertinently, it is his uncle who has the authority to permit the use of the building as a temporary headquarters of the KUA. Moreover, his father is reported to have been the person who made the land barter transaction feasible in the past.

We can easily identify the difference between the civil servants and the non-tenured officials in their everyday performance, which essentially underlines their formal and the semi-formal positions. Pak Zaki and Pak Yusuf dress more formally, white long-sleeved shirt on certain days, with an official badge pinned on their left breast. In addition, Pak Yusuf always wears a typically Islamic cap (*kopyah*). It seems that the *kopyah* says something about his state-sanctioned authority on Islamic matters. Pak Rohmat and Pak Hamid tend to dress more informally.

Figure 5.2. The *kepala* of the KUA talks to a villager

Although Pak Rohmat and Pak Hamid do not have permanent appointments, their position is important. Firstly, as said, their families are genealogically linked with religious elites in the area. Secondly, as locals, they share close emotional ties with the *modin*, the village religious leaders who act as informal marriage functionaries. The majority of them are graduates of *pesantren*. In the area there is an overwhelming tradition that a marriage ceremony, particularly the couple's first marriage, should always be performed by a *modin*. In this position, the *modin* does not just organize the administrative documents required for the registration, he is in charge of the whole process. Thirdly, if he is unable to attend, Pak Yusuf tends to assign one of the two local officials to represent him in the informal monthly meetings between the *modin* and village officials.

Meanwhile, as a civil servant whose job is to run the registration desk Pak Zaki feels bound to observe state regulations. He argues that he just implements the procedure as these have been committed to paper. Quite often *modin* lodge complaints about him, alleging that he has been *terlalu ketat* (too rigorous) and *mempersulit* (makes matters more complicated than they are). This is a very common reaction when

Pak Zaki insists that the couples turn up for the *rafak* (document verification). The *modin* are chary about *rafak* for several reasons. One objection is that either the bride or groom is still a boarder in a *pesantren* or works out of town. Another reason is that the couple has not yet signed the marriage consent form. When this happens, the *modin* usually approach Pak Rohmat to discuss the situation in the expectation that he will help to convince Pak Zaki that everything will turn out alright. Pak Zaki's principal concern is that: "*If an official from the District Office of Religious Affairs should conduct an audit and finds an irregularity; it is not their (*modin'*s) responsibility. We get the blame instead*." Therefore, on certain occasions the PPN, Pak Yusuf, has to resolve the impasse stating: "*Up to you,* modin*. If you do not want to follow our rules, please don't bother to work with us*!"

This explanation reveals a variety of issues, ranging from social forces in operation behind the local officials to the manoeuvres of *modin*, which inhibit the everyday practice of the KUA. Pak Yusuf is aware of this situation and that he needs to exercise his authority, albeit playing his power trump card very carefully. As the PPN, he is unquestionably a representative of the state, but as a *penghulu*, he tends to present himself in his guise as a religious authority. Pak Yusuf gives the local officials leeway to play a role in bridging the communications gap between the KUA and the local people. Meanwhile, Pak Zaki tends to position himself as the guardian of the state rules. Together these attitudes have been important an important factor in co-shaping the everyday image of the KUA as an institution dealing with Islamic affairs and a state body in charge of marriage administration.

4. Registering Marriages and Remarriages

As far as marriage practices in East Javanese villages are concerned, when the date of the marriage ceremony has been agreed on by the two families, the girl's father approaches a *modin* to ask for the latter's help in arranging the marriage ceremony. At this point, I should explain that people usually go to *modin* for the first marriage, that is,

when neither the bride or the groom, or both of them, has never been married before. If it is not a first marriage for one of the couples, there is no guarantee that *modin* will feel obliged to participate in the process. The father-*modin* interaction represents the initial process in the implementation of the state law on marriage. In the Sumbersari setting, I observed a conversation between a father and *modin* which ran as follows:

Father : *Pak Haji, kauleh amantuah. Senapah melleh buku nikah*?

(Pak Haji, I am going to marry my daughter. How much is it to buy (obtain) a marriage certificate?)

Modin : *Alhamdulillah Pak, anak sampean olle juddhu mogeh-mogeh deddih juduwen dunyah sampek akhirat*.

(Praise be to Allah! Your daughter has found her future husband. Wish her a blessed relationship in this world and in the Hereafter.)

Buku nikah benne juwel bellih tapeh istilanah ngurusin, bedeh persyaratanah. Sittung, koduh cokop omor, mon binek nembeles taon, mon lakek sangabelles taon. Duek, koduh anddik Kartu Keluarga, KTP, ben ijasah.

(The marriage certificate is not something to be bought but has to do with marriage registration which requires some conditions to be met. Firstly, the age of marriage: for women this is sixteen and for men nineteen. Secondly, you have to hand in a family card, an identity card and a school diploma.)

Father : *Enggi lengkap sedejeh*.

(Yes, they all are all present and correct.)

Modin : *Sampean napah ngurusneh dibik napah pasra dek kauleh*?

(Are you going to handle the registration yourself or asking me to do it?)

Father : *Pasra dek sampean Pak Modin sampek akad nikanah*.

(I want you handle it, Pak *Modin*, including the marriage ceremony.)

Modin : *Mon pasra dek kauleh biaya penguruseneh senekah, molain derih pengetikan, perjelenen sampek mareh*.

(If this is what you want it will cost (a certain amount), covering the preparation of all the documents, transport costs and the marriage ceremony.)

This conversation clearly shows that the villagers generally perceive marriage registration in terms of "buying a marriage certificate". They argue this is because they have to spend a certain amount of money to obtain it. The *modin* usually tells them that it is not a matter of buying a letter, but of registering a marriage. This misperception is not only prevalent in the matter of marriage registration, it also crops up in judicial divorce. The locals use the phrase of *melleh talak ka hakim* (buying a divorce from the religious judges). Some people refer to it as *melleh kartu koning* (buying a yellow card) because the divorce certificate for a wife has yellow decorations on it.

Despite the local perception of marriage registration as buying a marriage certificate, when we look at the figures for marriages registered, it appears that this step has become an increasingly important part of local marriage practice. I talked to various *modin* and they generally confirmed that marriage registration is already being perceived as a requirement by the local people. One of them said: *"It has changed now. Nearly all marriages are registered at the KUA*." With a Muslim population of 61,650, the Sumbersari sub-district has around 500-550 registered marriages a year. In the Pasuruan regency with Muslim population of 1,604,325 in 2015, the number of marriages was around 14,150 a year. The highest number of marriages in the most densely populated sub-district, Gempol, with a Muslim population of 199,272 it was 1,308 per year. The lowest number, amounting to

ninety-nine marriages a year, was found in the Tosari sub-district, in which Muslim population is 5,625.[79]

My materials from the records of the KUA Sumbersari show that there was an increase in marriage in 2010 compared to previous years. In 2008, the number of registered marriages was around 485 and it escalated to 642 in 2010. Unfortunately, I have not been able to collect have enough data to explain this escalation. However, if I might speculate on the basis of the information which I collected from *modin*, a number of factors were involved. Firstly, more ever-married couples are tending to register their remarriages. Secondly, people are more aware that many incentives, such as government subsidies or access to bank loans, are easier to obtain if they can produce a marriage certificate. Thirdly, both parents find it important to list their names on their child's birth certificate. What follows is the figure of registered marriage since the 1960s up to the present.

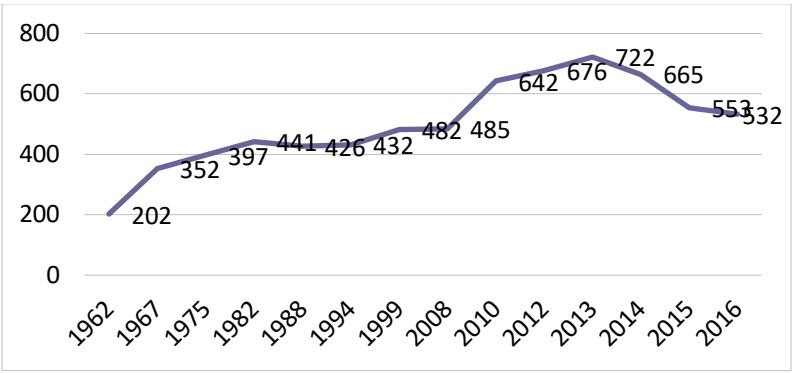


Figure 5.3. Registered marriage in the Sumbersari sub-district

This chart shows that, since 2015 there has been a tendency towards a decline in marriage registration. When I consulted the officials of the KUA about this matter, they argued that the decline was caused by neither a decrease in marriages nor a rise in unregistered marriage. Social mobility seems to have been the major factor

[79] BPS Kab. Pasuruan, *Kabupaten Pasuruan dalam Angka 2016*, p. 232.

instigating to this change. In distinction to the past when marriages generally involved only local people, the younger generation now have ample opportunities to establish cross-cultural families. This assertion is endorsed by the introductory letter (*surat pengantar*) now issued by the local KUA so that a groom can register his marriage at the KUA with which the bride is affiliated.

People's attitudes towards the importance of marriage registration no longer apply just to first marriages, they now extend to remarriages. The number of remarriages, in which one or both of the couple is a *janda* (ever-married women) or *duda* (ever-married men), constitutes nearly one-quarter of the total number of marriages.[80] In the year 2015, there were 124 remarriages out of 553 marriages or 22.42 percent. Meanwhile, in the year 2016, there were 122 remarriages out of 532 marriages or 22.93 percent. This figure also suggests that there has been an increase in people's awareness about seeking a judicial divorce from a religious court. Based on the records from Islamic courts in 2015, the number of divorces registered at the KUA Sumbersari was 104. Twenty-three were divorces initiated by husbands (*cerai talak*), while the remaining eighty-one were requested by wives (*cerai gugat*). Here, the ratio of divorce was 18.9 percent compared to the number of marriages in the same year. From Figure, I assume that both the KUA and the religious courts have increasingly been shaping people's attitudes about how to deal with marital matters. This finding corroborates earlier studies which have shed light on the growth of divorce cases in Indonesian religious courts over the last decade.[81]

The following charts are more detailed information of remarriages of *janda* and *duda* in 2015 and 2016 whichI collected from the SIMKAH records.

[80] The KUA administration and the civil registration in Indonesia differentiate between *janda mati* (widow) and *janda cerai* (divorced woman) and between a *duda mati* (widower) and *duda cerai* (divorced man).

[81] Nurlaelawati, 'Muslim Women in Indonesian Religious Courts: Reform, Strategies, and Pronouncement of Divorce'; Mohamad Abdun Nasir, 'Islamic Law and Paradox of Domination and Resistance', *Asian Journal of Social Science*, vol. 44, nos. 1–2 (2016), pp. 78–103.

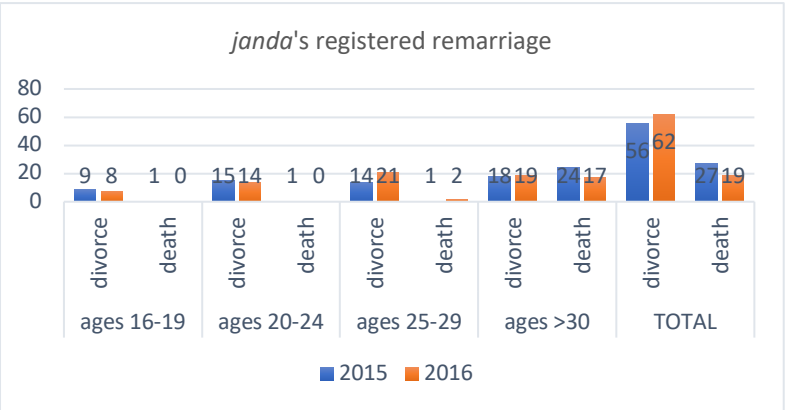


Figure 5.4. Registered *janda* remarriages

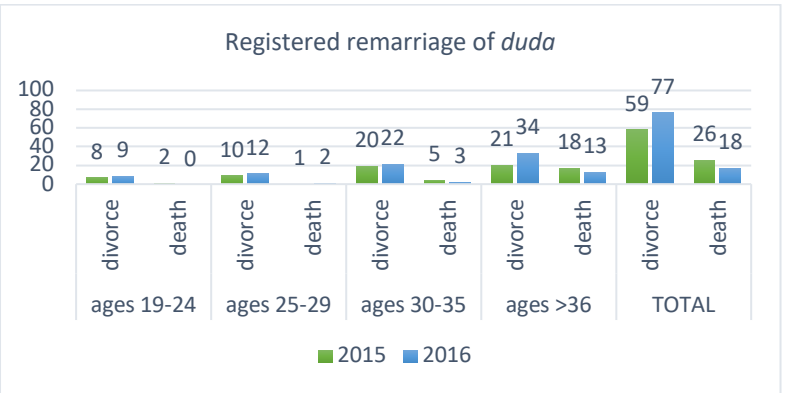


Figure 5.5. Registered remarriages of *duda*

*Ages are calculated based on the date of marriage registration.

5. *Akad Dua Kali* (twofold marriage ceremonies) and *Ta'kīd al-Nikāḥ*

People's changing attitudes towards marriage registration, discussed in the previous section, underscore the optimism felt about the effective functioning of the state as a body which wields legal authority. Does this mean that people are now more inclined to surrender their religious affairs to a state agent? If so, to what extent

does it affect the roles of traditional leaders? With reference to Law no. 22/1946 on the Registration of Muslim Marriage, Divorce and Reconciliation, Article 6 of the Compilation of Islamic Law states that a marriage ceremony must be held in front of and under the supervision of a marriage registrar (PPN). However, going back to the statement at the beginning of this article, it is obvious that Pak Yusuf was proclaiming the state-bestowed power to legalize Muslim marriage. He even uttered some threats to stress this authority. This situation leads me to an enquiry about what has actually happened to the state-society relationship lurking behind marriage registration.

Sometime in May 2017, a family in a Pasuruan village whose daughter was about to wed held a *walimah*. A *walimah* is a festive meal organized at the bridegroom's house for the purpose of making a public announcement of the forthcoming marriage ceremony (*akad nikah*). It is usually held in the morning and relatives, neighbours and respected figures in the village are invited. The groom and a few of his family members also attend. The programme commences with the recitation of *mawlid* (prayers for the Prophet) and prayers and usually concludes with an *akad nikah* ceremony. Two weeks earlier, when the bride's father had visited Haji Misbah, a *modin* in the village, to arrange the marriage ceremony, he decided to register it as a *nikah kantor*, marriage at the KUA office. Haji Misbah asked the father about who would serve as the *munakkiḥ*,[82] stating the following:

> "I told the father that the obligation to marry a woman is the responsibility of the *wali*. It is much better if the *wali* undertakes this duty personally. However, he can delegate it to another suitable person if he prefers. However, it is thought vulgar for the *wali* to delegate it to the *modin* and, moreover, the *wali* is still obliged to be present at the marriage ceremony."

In a nutshell, the *walimah* was held on the same day as the *akad nikah* scheduled by the KUA. In the meantime, the father had been persuaded by his family to include the *akad nikah* during the *walimah*,

[82] *Munakkiḥ* is the person to whom the marriage guardian delegates his authority to marry off his daughter.

following the usual pattern. It was said: "*Mumpung Gus Akib rawuh*, *dinikahno sekalian ae*" (Better to marry them now while Gus Akib is present). Gus Akib is a prominent religious leader whom the bride's family consult about Islam and other matters. Living as they do in the *pesantren* tradition, the locals still believe in the concept of *barakah* (blessing), a quality which revealed in the performance of good religious acts by people.[83] Their ideal is a marriage ceremony blessed by intermediation of Gus Akib. Hence the father raised the situation with Haji Misbah, the *modin*, who was among the guests at the *walimah*. Haji Misbah had no objection and permitted the *akad nikah* to take place. Nevertheless, he still insisted that a *akad nikah* would also take place at the KUA a few hours afterwards. This solution has led to a circumstance called *akad dua kali* (twofold marriage ceremonies).

A religious leader like Gus Akib, who was willing to conduct a religious marriage ceremony, is probably the exception rather than the rule. Gus Akib is a village-level religious leader. Some religious leaders who enjoy a high reputation usually refuse to marry couples.[84] They usually suggest the family hold the ceremony at the KUA. These religious leaders are well aware of the consequences of a marriage which has not been properly registered. They tend to support the authority of the *penghulu* and the KUA and perceive both the marriage ceremony and the registration as an inseparable process.

The practice of *akad dua kali* was the reason Pak Yusuf spoke so harshly. This practice is growing in the wake of the new policy drawn up by the central government in 2014 delineating a stricter boundary between marriage in the office (*nikah kantor*) and marriage outside the office (publicly known as *nikah bedolan*).[85] The basic principle at

[83] In Sufism, one can receive God's blessing through the intermediary of a holy man such as a saint or a *murshid*. Within the *pesantren* tradition, students are supposed to respect their teachers not only in the classroom but also in all aspects of life. Failure to pay respect can cause the loss of the *barakah* of the teacher. See Martin van Bruinessen, *Tarekat Naqsyabandiyah di Indonesia* (Bandung: Mizan, 1992), p. 215; Dhofier, *The Pesantren Tradition: The Role of the Kyai in the Maintenance of Traditional Islam in Java*, pp. 61–2.

[84] This is according to Pak Syukron, a *modin* in Sumbersari.

[85] Peraturan Pemerintah (Government Regulation) No. 48 Tahun 2014 tentang Perubahan atas Peraturan Pemerintah Nomor 47 Tahun 2004 tentang Tarif atas Jenis Penerimaan Negara

stake here is that the marriage ceremony is held at the KUA office. This complies with Article 21 Point (1) of the Regulation on the Registration of Muslim Marriages.[86] Interestingly, Point (2) covers the rules to be applied when, with the PPN's agreement, a bride proposes her marriage be solemnized outside the KUA office. Now, the differentiation between *nikah* at the KUA and outside the KUA has been clarified by the introduction of a scale of multiple tariffs. Those who perform *nikah kantor* are charged Rp. 0. Meanwhile, the couples' family have to pay more, Rp. 600,000 (approximately 40 US dollars), if they want to conclude a marriage ceremony outside the office or out of working hours. Before 2014, there was no difference between the two.

It was originally proposed that the marriage be conducted as a *nikah kantor*, but in practice involves both *nikah bedolan* and *nikah kantor*. The *nikah bedolan* is carried out without the attendance of a *penghulu*, while a *nikah kantor* is carried out at the KUA purely and simply to acquire state recognition. Both ceremonies are sometimes performed on the same day. The issue seems to revolve around money. However, judging by aforementioned story, it also has to do with more essential issues such as the marriage ceremony itself and the meaning people attach to it. Importantly, in *nikah kantor*, local people tend to delegate the role of marriage guardianship to a *modin*, not a *penghulu*. This situation also explains why *modin* still survive. Obviously the role they play meets religious-cum-administrative interests.

This section has demonstrated how *penghulu* negotiate their authority as they navigate the pressures exerted by various forces: the state, local tradition and their own interests. By drafting the new regulation, it seems that the state is seeking to increase its power of intervention in marriage. The campaign for *nikah kantor* actually began some years ago. In its implementation, the central government has made significant efforts to enhance the status of KUA offices, transforming them into 'ideal houses' in which to hold a marriage

Bukan Pajak yang Berlaku pada Departemen Agama (on the Revision of the Government Regulation No. 47/2004 on the non-tax revenue of the Department of Religious Affairs).

[86] Peraturan Menteri Agama (Regulation of the Minister of Religious Affairs) No. 11/2007 on Pencatatan Nikah (MarriageRregistration).

ceremony, actually renaming it *balai nikah* (marriage house). In the Sumbersari setting, the first floor of the office consists of an open hall which functions as the *balai nikah* in which marriage ceremonies are concluded. The existence of a *balai nikah* is becoming increasingly important, irrespective of the fact that the majority of them still provide less than adequate facilities. Therefore, the central government has spent a considerable amount of its budget for the Ministry of Religious Affairs to renovate hundreds of KUA buildings throughout Indonesia.[87]

Certainly, the differentiation between *nikah kantor* and *nikah bedolan* was not an issue in the past because there was no differentiation in the tariff. My observations in Sumbersari show that about 95 percent of marriage ceremonies prior to 2014 were conducted outside the office. By 2017, this situation had changed dramatically and the rate of *nikah bedolan* was now 24 percent of 531 marriages. This pattern is not typical only of Pasuruan villages, it is also emerging in other areas, although the decline is not as significant as in Pasuruan. Let us a look at the detailed figures of a KUA in an urban community in the town of Jember, East Java.[88] In 2013, the ratio of *nikah bedolan* was 92 percent of the all marriages (730 of 799), and it declined in the two years after. In 2014, *nikah bedolan* represented 598 of 792 (76%), while in 2015 they were 439 of 746 (59%). It climbed a little bit in 2016 (64%) and in 2017 (76%), although the rise is still far below that of 2013.

In a situation similar to that in Jember, in Yogyakarta the difference in the tariff has not exerted a significant influence. The rate of *nikah bedolan* remains high, approximately 85 percent. A number of factors underlie this situation. Firstly, in the general perception of the people in Yogyakarta the state *penghulu* is a religious official with an adequate knowledge of Islam. Therefore, they have no qualms about

[87] Kemenag, "Tiga Tahun Jokowi-JK: Kemenag Pemrakarsa Dan Investor Terbesar SBSN," accessed May 7, 2018, https://kemenag.go.id/berita/read/505984/tiga-tahun-jokowi-jk--kemenag-pemrakarsa-dan-investor-terbesar-sbsn.

[88] This data are calculated from the SIMKAH record which I obtained from a colleague of mine who is a *penghulu* at that KUA.

submitting all marriage matters to him. In many cases, it is the *penghulu* who conducts the marriage ceremony and assumes he responsibility of *munakkiḥ*. Secondly, the tariff for *nikah bedolan* is not really important to them. Thirdly, they tend to hold *nikah bedolan* because they want to invite their relatives, neighbours and colleagues to witness the ceremony. Fourthly, in their quest for greater social recognition, some families hold the marriage ceremony in a prestigious location, hotels or halls. When catering to these interests, there is no reason not to invite a *penghulu*. Nevertheless, a small number of them do choose to have *nikah kantor*. Their reason is usually because they do not want to have to deal with the complexities in the official documents.[89]

The implementation of the new tariff has certainly elicited different reactions from members of the society. Haji Misbah argued: "*The problem is that the difference is very big; Rp. 600,000 is a significant amount for villagers*." Throughout the years 2004-2013, marriage administration costed Rp. 30,000 for either *nikah kantor* or *nikah bedolan*. If they opted for the assistance of a *modin*, people spent around Rp. 350,000. As shown by the above story, the brides' families generally preferred an *akad nikah* to be part of a *walimah* as this arrangement offered at least two benefits: the participation of other villagers and the involvement of an honoured religious leader. It also backs up the assertion that a marriage ceremony has emerged as a fundamental arena in which religious leaders can exercise their authority.

As is commonly found in Muslim communities across the nation, a marriage ceremony is a merging of both religious and social activities.[90] This echoes the general opinion of Muslim scholars who state that Islamic marriage is an embodiment of the elements of civil contract, spiritual practice and worship of the divine.[91] This strongly suggest that an Islamic marriage is not merely a matter which falls into

[89] This is summarized from my interview with Pak Nasrudin, a *penghulu* in Yogyakarta, August 2019.
[90] Mir-Hosseini, *Marriage on Trial: Islamic Family Law in Iran and Morocco*.
[91] Nichols, 'Religion, Family Law, and Competing Norms', p. 197.

the category of *mu'amalah* (civil contract), that is, pronouncing a contract of *ijab* (offer) made by the woman's guardian (*wali*), *qabul* (acceptance) by the man and the payment of dower (*mahr*). It is undeniably a contract but one which has expanded its dimension to that of an *'ibadah* (ritual act) in which normative and traditional elements of religion are engaged.[92] Therefore, in social practice, we see the a marriage ceremony interwoven with religious rituals,[93] including the recitation of verses from the Quran, *sholawat* (prayers for blessings on the Prophet) and *tahlil* (prayers for the ancestors). I have witnessed many similar rituals in Pasuruan villages. In certain communities there, particular days, like Friday *Pon*,[94] are believed to be especially auspicious for a marriage ceremony.

I discussed this issue with a local religious leader, Kyai Karim. He argued that it is understandable that people tend to conclude a marriage ceremony at home. His major concern revolved around the religious capacity of a *penghulu.* Religious leaders generally perceive *penghulu* to be *ulama*, whereas, in fact, Pak Yusuf has never been trained in an Islamic institution. Kyai Karim was critical of the government for making it too easy to promote its functionaries to the position of *penghulu*. Another point which he disparaged was that the facilities in the KUA are not yet up to standard (*pantas*) for conducting a marriage ceremony. He stressed both the bride and the groom must be "treated with respect" (*dimulyakan*) but, on certain busy days, they have to queue like people lining up for a dole of *raskin* (*beras miskin*, rice for the poor). Kyai Karim also made the point:

> "I have heard public rumours that the *penghulu* is less than competent. His lack of skill in reciting *ayat* (Quranic verses) and *doa* (prayers) tends to get on people's nerves. People certainly think twice about involving him in a marriage ceremony. Marriage is a sacred ceremony. It is an *ibadah*. Like *sholat*, if you do not recite Surah Al-Fatihah, the principal element in *sholat*, properly, your *sholat* is unacceptable."

[92] Ziba Mir-Hosseini, 'Marriage', *Encyclopedia of Islam and the Muslim World* (New York: Macmillan, 2004).
[93] Black, Esmaeili, and Hosen, *Modern Perspectives on Islamic Law*, p. 114.
[94] *Pon* is one of the five-day *pasaran* (marketplace) cycle in the Javanese calendar.

This criticism seems to represent a view commonly held among the villagers. They see *akad nikah* as a crucial stage conducted under the guidance of a prominent religious leader, quite close to the issue of obtaining *barokah* (blessing). Hence, when organizing a *nikah bedolan*, people usually ask a *kyai* they respect to lead the marriage ceremony. When they do choose to have a *nikah kantor*, parents occasionally do bring their chosen *munakkiḥ* to the office. In some peculiar circumstances, it is said that there have been families who had felt they had to perform a second *akad nikah* at home because they were dubious about the validity of the earlier *akad nikah* at the office. Consequently, *akad dua kali* can be held both at home then the office or vice-versa.

Figure 5.6. *Akad nikah* in the office, but led by a *modin*

The existence of *akad dua kali* quite irrefutably demonstrates the state's attempt to control marriage has not been an overwhelming success. For Pak Yusuf who is on the frontline of the Muslim marriage registration, this development has indeed been an affront. One of my informants, Pak Usman, a high-ranking official in the District Office of Religious Affairs, acknowledged that people in Pasuruan villages still place great reliance (*ketergantungan*) on *kyai*, and this dependence lies at the heart of the skewed relationship between state *penghulu* and

religious leaders.[95] Pak Yusuf is well aware that he is being challenged by the forces of informal religious authority. His discomfort prompts him to speak more on behalf of the state, rather than to think about perceiving himself as a religious authority. He uses his statements to underline his authority to bestow state recognition on religious marriage as the means to negotiate. Here is an example:

> "I do not like them holding a traditional marriage ceremony at home and later having another marriage ceremony at the KUA. I usually ask the witnesses whether or not they are already married. If the answer is in the affirmative, I say: If it's a marriage certificate you're after, just ask your *kyai!*"

The *penghulu* Haji Misbah, who serves as the intermediary between the state and people, also finds himself in a quandary. He has suggested using the concept he calls *ta'kīd al-nikāḥ* for the second marriage at the KUA. I have failed to discover the origin of this concept. Literally, the first word *ta'kīd* is associated with the Arabic word *tawkid*, meaning endorsement or ratification.[96] *Ta'kīd al-nikāḥ* could be interpreted as authenticating a marriage (*pengukuhan pernikahan*). It seems that Haji Misbah's idea in coming up with this concept is that an *akad nikah* at the KUA will provide state authentication of a foregoing religious marriage. Interestingly, he has also applied this concept in another context, underage marriage. If the bride has not yet reached the legal age of marriage, the couples are first married religiously. Later, when the woman's age qualifies her for legal marriage registration, their marriage is registered at the KUA.

Unsurprisingly, the issue of *akad dua kali* has been raised in a series of meetings between the KUA and *modin*. Pak Yusuf has sternly cautioned the *modin* to discourage this sort of this marriage, saying "Don't ever marry them at home!" Nor do his troubles end there. Besides the thorny issue of competing authorities, another aspect has

[95] Interview with Pak Usman, the head of the Section on Islamic guidance of the Pasuruan Office of Religious Affairs, February 2017.

[96] Elsaid M. Badawi and Muhammad Abdel Haleem, 'و/ك/د w–k–d', *Arabic-English Dictionary of Qur'anic Usage*, Leiden edition (Brill, 2008), p. 1044.

been causing him and the other *modin* growing concern. Note the following statement by Pak Yusuf:

> "What they are really after is a marriage free of charge. Whether they arrive here by motorcycle or by car, I run my eye over them. Sometimes this makes me hesitate to marry them at the office. Just think about it, they have arrived here in a Livina (a minibus) and the dowry paid was one million. This is nonsensical if they want a *nikah kantor*. I have had to refuse them. Why do you not invite us to come to your home! Have a *nikah bedolan* and, by paying just 600,000, ensure your religious, worldly and Afterlife interests!"

In his remark, Pak Yusuf is making a veiled reference to the relationship between *nikah kantor* and the financial capacity of the families concerned. He was questioning why, when people find it hard to find that bit of extra money to hold a *nikah bedolan*, do they not opt to get a marriage certificate which, in his opinion, covers the worldly and religious aspects in marriage for so much less. He said, "*Buku nikah sekali untuk seumur hidup*" (a marriage certificate is for life). Meanwhile, *penghulu* in the KUA in the town of Jember said to me, "This year (2018), we are targeting 85 percent *nikah bedolan*." Both statements carry a strong undercurrent which hints that the issue of *nikah bedolan* is somehow bound up with economics. There is a logic behind this. However, before I setting out my explication, I should like to say that the existing table of multiple tariffs was the outcome of the absence of any regulation which would cover an incentive for *penghulu* to perform *nikah bedolan*. When it realized, the central government decided to set tariffs for *nikah bedolan*, legally entitling *penghulu* to supplement their income. This regulation means that, for each *nikah bedolan*, *penghulu* receive approximately Rp. 100,000 for their transportation and Rp. 150,000, or another amount depending on the KUA category, as an honorarium (*jasa profesi*).[97] Consequently, the

[97] Keputusan Direktur Jenderal Bimbingan Masyarakat Islam (the Decree of the Directorate General of Islamic guidance) No. DJ.II/748 Tahun 2014 tentang Petunjuk Teknis Pengelolaan Penerimaan Negara Bukan Pajak atas Biaya Nikah atau Rujuk di luar Kantor Urusan Agama Kecamatan (on the technical procedure of the organisation of non-tax revenue from the fees of marriage or reconciliation outside the sub-district KUA).

fluctuating number of *nikah bedolan* has become a major issue among *penghulu* as they feel it in their pockets.

Pak Syamsu, the *kepala* of the KUA in the city of Surabaya, acknowledged that this bureaucratic reform is a confirmation of the legal certainty of the rights of *penghulu* in the case of a *nikah bedolan*,[98] but it has not overcome the problem of the organization of marriage registration in general. He referred to the lack of competence shown by KUA in the management of their everyday activities as they are forced to fight an uphill battle, frustrated in their efforts by the limited budget allocated them by the government. He argued: "The new regulation has undermined our capacity to act. Under the old regulation, we could still donate to social or mosque activities around us. Now, the budget for the KUA is so straightened, we cannot do anything for our non-tenured staff or for society in general because we just do not have the money to do this." In the past, the KUA had the autonomy to manage the money it received from people via *modin* and strengthen their institutional power. With Rp. 0 coming in for *nikah kantor* and the incentive for *penghulu* to perform *nikah bedolan* severely curtailed, *kepala* KUA are currently besieged by problems arising from the organization of the office. In their attempts to deal with this, I witnessed that some KUA offices in other areas have been encouraging their *penghulu* not to grab all the incentive, but to distribute some of it in the wider interest of the KUA.

Apart from these financial considerations, on the basis of Migdal's state-in-society, the practice of *akad dua kali* has been a place in which the state has been unable to impose its single-authoritative authority in marriage practice and, consequently, everyday agency has been able to intervene in the making of the state practice. The practice now provides what Peletz has called "the co-imbrication of law, politics, and religion".[99] *Akad dua kali* encompasses a multiplicity of issues, ranging from state authority, religious authority, the local sense of religious validity and the *penghulu*'s economic interests. However, this has been

[98] Interview with him, October 2017.

[99] Michael G. Peletz, 'A Tale of Two Courts: Judicial Transformation and the Rise of a Corporate Islamic Governmentality in Malaysia', *American Ethnologist*, vol. 42, no. 1 (2015), pp. 144–60.

offset by a local development in which people are strategizing the multiple tariffs for marriage by concluding *akad dua kali*. This tactic allows them to maintain the ideal of marriage ceremony which incorporates the religious and social activities so important to them. This is their response to their perception of the lack of a religious competency displayed by *penghulu*. The intervention of traditional authority is embedded in this realm. In its turn, this 'deviation' has become a critical stepping-stone for *penghulu* to implement state laws on marriage on a grassroots level. Subtly, the tactics adopted by *penghulu* never mount a direct challenge to the traditional authority. Instead, they tend to present themselves as state agents, exercising their authority by the means of the threat that state recognition of marriage will never be possible without the possession of a marriage certificate which they have signed.

6. Conclusion

Examining the developments in a KUA office in a Pasuruan society, it seems obvious that the day-to-day running of this state body is not a compartmentalized, isolated aspect of society. In this chapter, Migdal's state-in-society approach has been helpful in revealing the complexities faced by *penghulu* and the KUA in the implementation of legal rules on marriage registration, as they struggle in a web of pressures exerted by societal agencies.

I found that the internal synergy between the KUA officials has been the key to securing the KUA's legitimacy. My principal reasons for this assertion are threefold. Firstly if they are to fulfil their tasks satisfactorily, the *kepala* of the KUA and the *penghulu* need to understand the workings of local social life, including how the local people perceive a marriage ceremony and transfer this knowledge into the grounds for making balanced decisions. Secondly, it should not be overlooked that the non-tenured local officials at the KUA also play a considerable role in communicating the state's ideas on marriage to social agencies, including *modin*. Thirdly, the KUA civil servants tend to implement the state rules strictly. Other factors also play a role. In

Pasuruan villages, local people regard marriage registration as a transactional relationship between state-citizen. *Modin* are the key agents in this brokerage. This KUA-*modin*-society relationship has produced the remarkable development of registered marriages and remarriages. In a nutshell, this triangular relationship demonstrates the effective functioning of the state.

In spite of these changes, the Indonesian central government has not given up its own ideas about how to manage marriage registration. Consequently, the central government has drafted a regulation which draws a stricter boundary to be drawn between *nikah kantor* and *nikah bedolan* in the expectation that this would be effective in eradicating the custom of earning a gratification among *penghulu*. This has not been plain sailing. In fact, this regulation has intensified the tension between religious authority and the state agency and led to the practice of *akad dua kali*. It seems fair to argue that *akad dua kali* is an outgrowth of the multiple tariff system for marriage ceremonies. Be that as it may, it also has to do with the local conceptualization of the function of a marriage. In everyday Muslim life, a marriage ceremony entails not only religious but importantly also social activities, both of which require the intervention of religious leaders. At the same time, we have also been witnessing situations in which *penghulu* are still challenged by accusations of their lack of competency in Islam. Given their blurred situation, *penghulu* have needed to redefine their position if they were to be accepted as legitimate agents competent to deal with Muslim marriages. Heeding the warning, *penghulu* have transformed their authority to provide state recognition of marriage into their source of power.

To conclude, in Pasuruan, *penghulu* tend not to identify themselves as *ulama*, even though their identity as a religious authority remains important. This differs from Nurlaelawati's finding in West Java. *Penghulu* in East Java identify themselves as state agents, wielding their authority to provide state recognition of a marriage as a resource to reinforce their influence. This suggests two interrelated aspects: Firstly, they invariably speak on behalf of the state. Secondly, a marriage certificate has become an important instrument in bolstering

their authority. Finally, *modin* are apparently playing a greater role in bridging the relationship between the state and society. *Modin* are finding themselves the subject of a compromise between competing legal orders; a situation which has given rise to the production of new legal norms, such as *ta'kīd al-nikāḥ*, to make their intermediary role possible. However, turning to the nub of the problem, the fact that *penghulu* have not been successful in persuading society to marry according to the State law suggests that, in the first place, that they do not enjoy a solidly entrenched position in society. This is in contrast to the *modin* who, with the rise of in interest in *ta'kīd al-nikāḥ*, have been able to create a semi-autonomous social field, which sustains customs and rules symbols internally but is nevertheless vulnerable to rules and decisions from outside the field.[100] In other words, the idea of *ta'kīd al-nikāḥ* has been effective in touching the meaning of marriage as the local people perceive it on the one hand and in ensuring the implementation of the state legal norms on marriage on the other hand.

The following chapter will problematize the social and legal meaning of marriage legalization for villagers who have made unregistered marriages. It seeks to understand people's motives as well as the ways people try to obtain state recognition of unregistered marriages.

[100] Sally Falk Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', *Law and Society Review*, vol. 7, no. 4 (1973), p. 720.

CHAPTER 6

Unregistered Marriage and the Search of State Recognition

1. Introduction

Abdulloh (44 years) is the husband of Jamilah (40 years). They have been married for twenty-one years. However, their marriage was only concluded traditionally and, hence, not registered at the KUA, a practice locally referred to as *nikah sirri*. Therefore, they do not have a marriage certificate. Nevertheless, Abdulloh has somehow been registered as the *kepala keluarga* (head of household) and Jamilah as the *istri* (wife) on their Kartu Keluarga (KK, family card). Normally, this would not have been possible because they are not legally a couple. When I asked him how this could happen, Abdulloh replied, "I just received it from the village official (*pamong*). He organized everything."[101] In possession of this KK, they are accordingly recognized as a legal couple in the civil administration.[102] Similarly, on their Kartu Tanda Penduduk (KTP, identity card), their marital status is listed as *kawin* (married).

Although their status is recognized as *kawin*, Abdulloh and Jamilah encountered a problem when they wanted to go on the *ḥajj* (pilgrimage). The KK or the KTP, which confirmed their status as

[101] Interview with Abdulloh, November 2017.
[102] It is worth noting that, in the old KK version, the date of marriage was not mentioned.

kawin, did not suffice as a requisite document for the *ḥajj* visa application. Under state law they had to submit a marriage certificate to prove that they are in a lawful marital relationship. Their predicament was that they were not qualified to apply for it. The 1991 Compilation of Islamic law (Kompilasi Hukum Islam, KHI), which acts as the reference of Islamic judges, stipulates that Muslims can legalize their unregistered marriages through a judicial procedure called retrospective marriage legalization (*isbat nikah*). Although this legal norm was formulated to accommodate marriages concluded before 1974 when the legal obligation of marriage registration came into force, nowadays judicial practice in the religious courts will legalize unregistered marriage whenever it has been concluded as long as it can be proven that the wedding ceremony complied with Islamic precepts.[103]

Given this choice, instead of proposing an *isbat nikah*, Abdulloh opted to apply for marriage registration at the KUA. This meant that he would have a newly registered date of marriage, erasing any prior marital relationship between him and his wife. Abdulloh had no concerns or the least objection to the new date of marriage, although it would give consequences particularly on the legal position of their children. The children cannot state the names of both parents on their birth certificates because; as far as the bureaucracy is concerned, they were born before the registration of their parent's marriage. Welchman remarks that one distinct manifestation of the bureaucratization and the centralization of the state authority against what the Sharia postulates in marriage is the validity or otherwise of acts performed in accordance with traditional law but in violation of state law. Registration serves several objectives, principally extending state control over the private affairs of citizens. [104]

Abdulloh's experience illuminates the array of problems plaguing the state-citizen relationship in contemporary Indonesia. Their

[103] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, pp. 202–3.
[104] See Welchman, *Women and Muslim Family Laws in Arab States: A Comparative Overview of Textual Development and Advocacy*, p. 53.

possession of a KK allows Abdulloh's family to enjoy certain benefits from the state. However, the legal status as husband and wife on the KK was not suffice to meet the requirements for *hajj* documentation. Harbitz and Boekle-Giuffrida remark that "every day in any given country around the world, individuals are denied access to fundamental services and rights because they cannot present positive proof of identity".[105]

In short, Abdulloh needed a marriage certificate from the KUA to obtain a *ḥajj* visa. It was actually not Abdulloh who was in need of a marriage certificate, because he could have applied for a *hajj* visa on his own. However, since he wanted to go together with his wife, it was actually his wife who needed a legal marriage certificate. According to Saudi Arabian regulations any woman under the age of 45 who wants to apply for a *hajj* visa needs to indicate by whom she will be accompanied (*yurāfiquhā*) as her male guardian (*maḥram*).[106] In this case this role was obviously to be assumed by Abdulloh, but since he was not officially registered as her husband, this was impossible.

One interesting point emerging from this story is that Abdulloh used the KK - showing his status as married - to apply for marriage registration. The responsible authority at the KUA was aware of this anomalous situation, yet proceeded with the registration. I shared this case with a close friend of mine who is a *penghulu* in another town and he responded spontaneously "*harus ditegur itu KUA nya*" (The KUA should be rebuked). His argument was that the KUA was obliged to reject Abdulloh's application and should have encouraged him to go to the Islamic court to request an *isbat nikah*.[107] I also tried to obtain clarification on this decision with a person from the KUA, who said: "We just wanted to help him. It was a pity that he should have to go to the court, because this takes money and time. Abdulloh only needed an official marriage certificate".[108] For Abdulloh, the expedient of

[105] Mia Harbitz and Bettina Boekle-Giuffrida, *Democratic Governance, Citizenship, and Legal Identity* (New York, 2009), p. 5.
[106] Saudia.com, *Hajj Visa*, https://www.saudia.com/before-flying/travel-information/hajj-and-umrah/hajj-visa?sv_lang=en&sv_cn=ID
[107] Interview with Pak Multazam, a *penghulu* in Jember.
[108] Interview with Pak Zaki, a KUA official in Sumbersari.

registering his marriage at the KUA meant having to spend less money and being assisted more efficiently than if he had gone to the Islamic court.

2. Why Legalising an Unregistered Marriage?

There has been a widespread public assumption that assuring the legal status of marriage is important to the protection of rights to state services for family members and, more widely, to ensuring public order. Marriage registration means that women and their children are entitled to state services and protected by law against the disadvantageous consequences of a divorce or a husband's death, such as being unable to claim alimony and maintenance. However, it appears that Abdulloh was not interested in the legal validity of marriage. All he wanted was state recognition of his marriage, in the form of a marriage certificate, purely and simply to be able to go to Mecca.

In his case, marriage registration sounds as if it is a purely administrative affair. Nonetheless, it has a wider dimension. A marriage certificate is part of a person's legal identity. In Abdulloh's case, possession of a marriage certificate was the solution he needed so that he and his wife could go on the *hajj*. However, from the state perspective, when he registered his marriage Abdulloh clearly (re)negotiated his sense of self as a citizen.[109] In day-to-day reality, the absence of proof of legal identity can disqualify a citizen from access to rights or state protection. Legal identity is as much about being a citizen as about one's sense of belonging and ability to exercise his or her rights and obligations.[110] Consequently, legal identity influences citizenship. Following Van Klinken, I wish to emphasize that

[109] Deepta Chopra, Philippa Williams, and Bhaskar Vira, 'Politics of citizenship: Experiencing state-society relations from the margins', *Contemporary South Asia*, vol. 19, no. 3 (2011), p. 243.
[110] Harbitz and Boekle-Giuffrida, *Democratic Governance, Citizenship, and Legal Identity*, p. 5.

citizenship develops in relation to the specific way the state and local societies reshape each other.[111]

For Abdulloh, and many other Indonesians, religious legitimacy which constitutes the social acceptance of a marriage is more important than state recognition.[112] Sonneveld has remarked that, from a legal point of view, it is not difficult to differentiate between formal marriages and informal marriages.[113] However, from a social perspective, the difference is hardly visible. Platt confirms this statement when she argues that, where the reach of the state is limited, marriage remains largely a community-based affair.[114] Bedner and Huis also claim that, in West Java, state recognition of a marriage is considered unimportant from a social perspective.[115]

On the law-making level, debates about family law in Muslim majority countries have paid great attention to the matter of how the state should deal with religious norms. By contrast, when it comes to marriage registration, my observation on the grassroots level in Pasuruan villages shows that these issues revolve around the significance of the state recognition of marriages which have been accorded social recognition based on community-based legal norms, which in turn are grounded in religion. This begs the question of in what ways is the legal validity of marriage relevant? This is core to this chapter. I argue that state recognition of a marriage cannot entirely substitute community-based legal norms. The state's ideas of recognition and protection might diverge quite sharply from what people imagine. For Abdulloh, registration served a legitimate proof which he could use to claim certain rights. This reflects an emic point

[111] Gerry van Klinken, 'Citizenship and local practices of rule in Indonesia', *Citizenship Studies*, vol. 22, no. 2 (2018), p. 114.
[112] In Java, and in Indonesia in general, marriage is performed according to the social norm which in practice involves informal religious leaders. Living together outside wedlock is a taboo. The local belief is that the extent to which a marriage is valid merely depends on whether it has been concluded in conformity with Islamic law.
[113] Sonneveld, 'Rethinking the Difference Between Formal and Informal Marriages in Egypt'.
[114] Platt, *Marriage, Gender and Islam in Indonesia: Women Negotiating Informal Marriage, Divorce and Desire*, p. 5.
[115] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.

of view in which the local people of Sumbersari, Pasuruan, refer to the notions of *keperluan* (necessity) or *sedang butuh* (in need).

Nowadays Indonesia offers an array of mechanisms to which people can resort to be able to adjust their situation so that it dovetails with the state framework. When it issues legal documents, the state is aiming to protect certain rights, in particular those of women. However, providing certain people with a legal document is only possible if state marriage functionaries are sympathetic to and flexible in implementing the regulation.[116] To a certain degree, they have to come up with discretionary policies and are prepared to commit legal transgressions. When they do this, these functionaries feel privileged to be able help people obtain their due right to state services. This explains why Abdulloh's submission for marriage registration was accepted. This situation necessarily relates to the 1980 work by Michael Lipsky. His book *Street-level bureaucracy: Dilemmas of the individual in public services* is meaningful as it examines the behaviour of frontline workers in policy delivery agencies. He refers to these frontline workers as 'street-level bureaucrats'. They are public employees whose job is to cope directly with citizens and they are permitted considerable discretion in the implementation of their work.[117] Certainly their job is to implement public policies but, at the same time, they have to respond to citizen's requirements on the basis of a limited amount of information or time in which to make a decision.[118]

The attitudes adopted by state agencies are of necessity based on the local situation. In an interview, Haji Hamim, a village religious official, said, "*di sini belum tertib, masih kocar-kacir*" (documentation here is not yet well organized, it is still a mess).[119] While the head of the KUA said, "*di sini sulit, karena (mohon maaf) SDM* [sumber daya manusia] *masyarakat sini kurang*" (It is not easy here because (I do

[116] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, p. 105.
[117] *Ibid.*, p. 3.
[118] Lars Tummers and Victor Bekkers, 'Policy Implementation, Street-level Bureaucracy, and the Importance of Discretion', *Public Management Review*, vol. 16, no. 4 (2014), pp. 527–47.
[119] Interview with Haji Hamim, a *modin* in Sumbersari, February 2017.

apologize) local human resources are not yet up to scratch). The variety of problems which arise from legal documents have had to have been subject to discretion and negotiation. This negotiation has also turned out to be a means by which informal marriage-functionaries can maintain their vital position. In these sorts of situations, citizens' rights are somehow constituted by the intervention of these informal leaders. In their work, Berenschot and Van Klinken have underlined the importance of informal connections in the shaping of state-citizen interactions.[120] Bedner and Van Huis have dealt with this issue too.[121] They have emphasized the pragmatism which inevitably underlies a situation in which state officials prioritize the interests of the weaker party.

This chapter demonstrates how state recognition of a marriage works. It will address the different ways people strategize to obtain state recognition of their marriage and examine the ways the state accords the recognition they crave. Through extensive observation at the KUA and a close reading of marriage registration documents, I have managed to identify the kind of administrative transgressions to which a marriage registrar resorts. In addition, my investigations at the KUA, I have analysed conversations in Islamic courtrooms and the legal reasoning used by Islamic judges in the cases of marriage legalization and the legitimation of children.

The following section deals with the theoretical framework of this chapter. Legal identity and citizens' rights are especially relevant in approaching the issues arising from marriage registration. Section 4 is concerned with administrative matters and the discretion used by the KUA in marriage registration. Section 5 examines the ways Islamic court handles cases of marriage legalization. Sections 6 elucidates the roles of Islamic courts in the case of the legitimation of children. Section 7 concludes.

[120] Ward Berenschot and Gerry van Klinken, 'Informality and Citizenship: The Everyday State in Indonesia', *Citizenship Studies*, vol. 22, no. 2 (Routledge, 2018), pp. 95–111.
[121] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism'.

3. Legal Identity and Citizens' Rights

Legal identity has become an important issue over the last years. There is no single definition of what it really involves. However, referring to the Institute on Statelessness and Inclusion, legal identity is defined as: "A set of elements and characteristics, the combination of which is unique to every person, which defines each person and governs their relationship, obligations and rights under both private and public law."[122] In simple terms it refers to the recognition of an individual as a person before the law. Recognition of legal identity often depends on individual possession of valid legal identity documentation or other forms of proof of legal identity. The United Nations has incorporated legal identity into the Sustainable Development Goal (SDG). Goal 16 emphasizes the promotion of peaceful and inclusive societies which will encourage sustainable development and the providing of access to justice for all.

Because legal identity is an important starting point in realizing personal rights, human rights activists pay great attention to the term of legal identity. In Indonesia, a number of human rights and international donor organizations have launched a campaign to bring home the importance of legal identity. One is the Australia Indonesia Partnership for Justice (AIPJ). For a couple of years now, the AIPJ has been focusing on the problem of absence of legal identity documents which can limit access to civil rights and services. Some of their contributions were incorporated in the law of Population Administration 23/2006. Hence for the last fourteen years, the state has had a national reference for population administration and civil registration.

Studies about legal identity are closely connected to the problem of statelessness. This is a problem worldwide. Millions of people are stateless and an estimated 1.1 billion lack legal identity

[122] Insitute on Statelessness and Inclusion, *Sustainable Development Goal 16.9: 'Legal Identity', Nationality & Statelessness* (London: Institute on Statelessness and Inclusion, 2018), p. 7.

documentation. Having to live undocumented lives or without effective citizenship prevents them from reaching their full human potential as they are cut off from access to healthcare, education and other services. Making sure that every individual is recognized as belonging and capable of accessing the documents to prove their legal status is important, multifaceted work. Documents like birth certificates definitely serve as foundational proof of citizenship. Marriage certificates are another inseparable proof of legal identity.

Although marriage registration and citizenship are two distinct concerns and represent different fields of enquiry, they are fundamentally related to one another. Both are about recognition of a particular status of its subject by the state. Citizenship concerns the relationship between the state and its citizens. It is of utmost importance because it provides citizens with a sense of identity which enables them to exercise a wide range of basic social, economic and political rights. Without a doubt, people's participation in acquiring legal identity has been important in enhancing the quality of citizenship in post-*reformasi* Indonesia.

An abundance of scholarly works has underlined the rise in citizens' rights in the wake of the collapse of the Soeharto regime in 1998. Its fall paved the way for democratization and a series of decentralization reforms which extended greater autonomy to local governments and introduced bureaucratic reform. This change seemed to offer great opportunities to transform the public administration and public service. The issuance of a series of laws such as the Presidential Regulation 81/2010 on bureaucratic reform and Law 25/2009 on public service has marked this transformation. However, we know that citizenship in Indonesia was, and is, being challenged by the rise of a wave of religious, ethnic and regional identity politics.[123] *Reformasi* in 1998 has allegedly intensified these fragmented identities.

[123] Henk Schulte Nordholt, 'Identity Politics, Citizenship and the Soft State in Indonesia: an Essay', *Journal of Indonesian Social Sciences and Humanities*, vol. 1 (2008), pp. 1–21.

I should argue that the desire of the state to be able to protect its citizens' rights has made marriage registration increasingly effective. The insistence by the state that possession of proof of legal identity defines certain rights which give people with limited choices a chance. People can argue that the state validity of a marriage does not necessarily improve the validity and social acceptability of a religious marriage. However, the current problem does not lie in whether or not the marriage is valid, but the extent to which a citizen can claim rights from a marriage. The absence of legal identity could disqualify a citizen from access to rights. Here, linking in with my argument in Chapter 1, a rights-to-obtain-the-state-services approach has been effective in changing people's ideas about accepting the state's orientation. Importantly, this approach circumvents the necessity for the state to speak out on religious issues concerning marriage, in which it might have to challenge religious authorities.

4. Administrative Transgressions in Marriage Registration

Besides demonstrating the insoluble relationship between legal identity and citizenship, Abdulloh's case also reflects the degree of pragmatism practised in the field. My close reading of marriage registration documents has uncovered what can be called a kind of administrative transgression resorted to by *penghulu*. The importance of administrative transgression was apparent in the everyday functioning of the marriage bureaucracy at the KUA.

In order to understand how administrative transgression works at the KUA, it is helpful to have a picture of marriage registration procedure. In 1990, the Minister issued a regulation setting out the obligations of marriage registrar.[124] This regulation maintained the requirement that an oral application for a marriage to to be made. More than a decade later, KMA No. 298 of 2003 signified major changes as it re-standardized the documents for marriage registration previously required. This KMA can be considered the first regulation

[124] PMA No. 2/1990 tentang Kewajiban Pegawai Pencatat Nikah (the obligations of marriage registrar).

to use the term *pencatatan nikah* (marriage registration), although it was amended a year later by KMA No. 477 of 2004. [125] Currently, marriage registration is undertaken on the basis of PMA No. 11 on marriage registration of 2007. The regulations of 2004 and 2007 stipulated that an application for marriage must be submitted in a written form. It set out the requisite documents as follows:

- Letters from the village administration which give the personal details of the bride (*keterangan untuk nikah* or Model N1), the bride's and the groom's origin (*keterangan asal usul* or Model N2) and the details of the parents (*keterangan orang tua* or Model N4).
- Application for marriage submitted in a letter (Model N7)
- Letters confirming the spouses' consent (*persetujuan mempelai* or model N3).
- A letter of permission from the parents if the ages of the bride and groom are under 21 (Model N5).
- If the bride is a widow (or the groom is a widower), she (or he) has to submit a death certificate (Model N6).

In Sumbersari society, as I mentioned in the previous chapter, the administrative side of marriage registration is handled by a *modin*. He takes all the documents to the KUA; rarely do the ordinary people come to the KUA themselves. They attend only if the KUA invites them. This invitation is extended after the KUA official has verified their documents. Sometimes, a complication arising from the verification process means that the couples have to personally attend the KUA office. According to PMA No. 11 of 2007, marriage registration generally requires five steps: submission of a proposal for marriage registration, document assessment, announcement of the marriage ceremony, marriage ceremony (*akad nikah*) and the signing of the marriage certificate (*penandatanganan akta nikah*). The second step, the process known locally as *rafak* (*pemeriksanaan,* observation) is crucial. The *rafak* is conducted to examine the conformity of the data written on the forms with the documents enclosed. This term is

[125] KMA No. 477/2004 tentang Pencatatan Nikah (marriage registration).

understood and used differently in other areas in Java. In Central Java, *rafak* means a divorce initiated by wife.[126]

To support the validity of all the forms, the bride has to enclose certain documents, namely: an identity card and a birth certificate or a diploma. In Sumbersari, not all the brides have a birth certificate, among other reasons because of the legal status of their parents' marriage. In this case, a birth certificate can be replaced by a diploma. So, a diploma can substitute other missing documents.

At this point it is worth mentioning that the number of marriage registrations in Sumbersari has escalated dramatically since 2010. It is safe to assume that, before that year, numerous marriages went unregistered. The limited number of documents available for examination made it hard to determine who was qualified to act as the *wali* (marriage guardian). In interviews, the head of KUA Sumbersari complained about the validity of the *wali* as written on the form. He pointed out that in some cases the *modin* had been slapdash about this. He was worried about how it was possible to know if someone was a proper *wali* according to Islamic law, saying:

> If someone else were to take over my position, he might not be acquainted with the area. Imagine you are the head of the KUA and you do not know that a particular person is the proper *wali* of the bride? A birth certificate is no guarantee. The only document you can refer to is the copy of the parents' marriage certificate. This cannot lie. The N2 form of the parents is noted on it; as well as on the N4 form. But, how can this be proved? In Surabaya, the marriage certificate of the parents must be handed in.

The problem of the *wali* is one which often arises. Let me explain the first case to unravel the problem. Aisya is a daughter of Muhdor and Maimunah, born of a marriage which was not registered. The marriage, which took place in early 2000, was not her first marriage for Maimunah because she was a widow. Aisya attached her family's KK and a diploma in her application for marriage registration. The KK had been issued years ago. In the KK, Muhdor was listed as the head of

[126] Hisako Nakamura, *Perceraian Orang Jawa: Studi tentang Pemutusan Perkawinan di Kalangan Orang Islam Jawa* (Yogyakarta: Gadjah Mada University Press, 1990), p. 66.

household and Maimunah as his wife. Since the government has changed its policy, nowadays, this confusion is unlikely to happen: if a family cannot present a marriage certificate at the civil registration office, the legal status of the parents must be registered as *belum kawin* (unmarried). The mother appears as the head of the household and the husband appears in the bottom row as *lainnya* (the other). Therefore, the status of Muhdor as the head of household does not automatically guarantee his position as Aisya's biological father in the KK because of the absence of the marriage certificate. According to the KK, Aisya is fatherless. Her diploma also mentions only the name of her mother.[127]

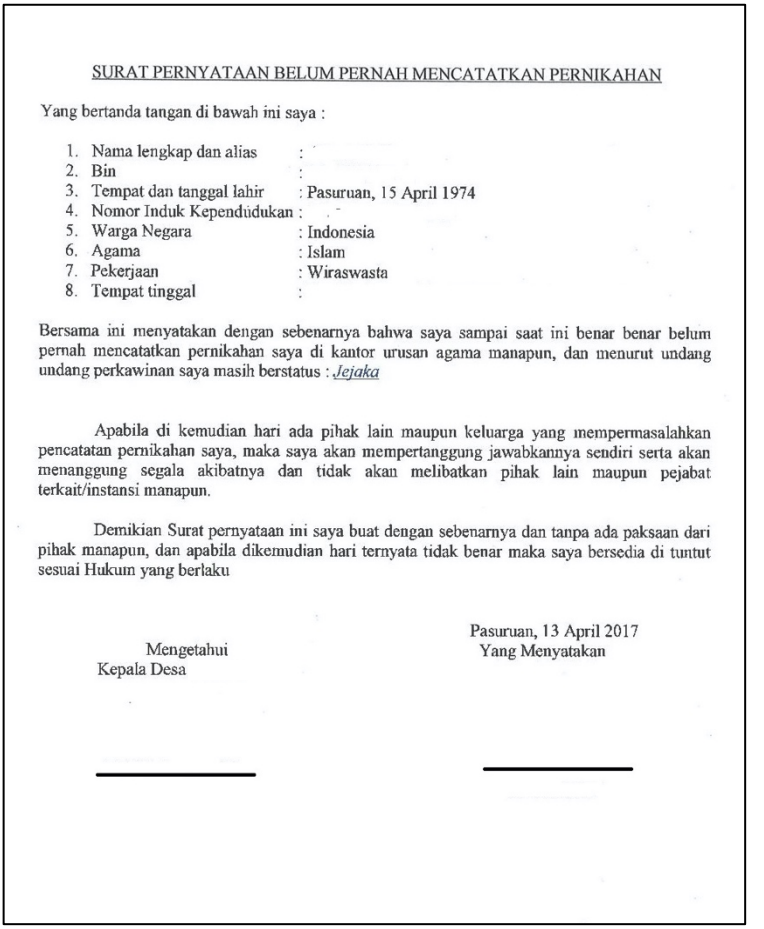
In the marriage application forms submitted to the KUA, she was required to mention her father who would also serve as her *wali*. On account of the ambiguous position of her father, Aisya was invited to come to the KUA to have *rafak*. As Aisya did not have a marriage certificate for her parents, the *modin* provided Aisya with two letters from the village administration. The first was a letter declaring the marital relationship between her father and her mother was valid according to Islamic law. The second, a letter which declared that Muhdor was her biological father who had the right to marry her off. These letters did the trick. At this point, we see how an administrative transgression proved an important element in coping with cases which fell outside the box. As a street-level bureaucrat, the *penghulu*'s position is critical, as he plays a crucial role in settling problems arising from these citizen entitlements. He either directly provides public benefits through the services he offers or mediates between citizens.[128] The immediacy of a change in policy in his interaction with citizens and its impact on people's lives is of vital importance.[129] The head of the KUA went ahead with the marriage registration on the basis of letters which should not have existed according to the standard procedure. Bedner and Van Huis have remarked that the

[127] It is interesting to note that the newest version of the KK now includes the date of the marriage ceremony. It would be impossible for couples in an unregistered marriage to manipulate the data in the KK as happened in the solution to Muhdor's problem.
[128] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, p. 6.
[129] *Ibid.*, p. 8.

bureaucrats on the lowest levels of state administration play crucial roles in providing documentation for those who do not qualify.[130]

Administrative transgression also came into play in Abdulloh's case. As I claimed earlier, according to Indonesian law, the KUA has no authority to legalize a marriage which had been concluded earlier but had not been registered. This authority is the prerogative of the Islamic court. Although he must have been aware of this, the head of the KUA chose to exercise his discretion and agreed to register the marriage. At the time, because the KK had their status as *kawin* (married), the KUA asked Abdulloh to declare on paper that he had never registered his marriage before. Abdulloh asked the village administration to issue the required letter. The letter declared that Abdulloh had never registered his marriage at any KUA office and, therefore, under the provisions of the marriage law, his legal status was *perjaka* (unmarried). Of course, this letter contradicts the legal status written in the KK.

[130] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.



SURAT PERNYATAAN BELUM PERNAH MENCATATKAN PERNIKAHAN

Yang bertanda tangan di bawah ini saya :

1. Nama lengkap dan alias :
2. Bin :
3. Tempat dan tanggal lahir : Pasuruan, 15 April 1974
4. Nomor Induk Kependudukan :
5. Warga Negara : Indonesia
6. Agama : Islam
7. Pekerjaan : Wiraswasta
8. Tempat tinggal :

Bersama ini menyatakan dengan sebenarnya bahwa saya sampai saat ini benar benar belum pernah mencatatkan pernikahan saya di kantor urusan agama manapun, dan menurut undang undang perkawinan saya masih berstatus : *Jejaka*

Apabila di kemudian hari ada pihak lain maupun keluarga yang mempermasalahkan pencatatan pernikahan saya, maka saya akan mempertanggung jawabkannya sendiri serta akan menanggung segala akibatnya dan tidak akan melibatkan pihak lain maupun pejabat terkait/instansi manapun.

Demikian Surat pernyataan ini saya buat dengan sebenarnya dan tanpa ada paksaan dari pihak manapun, dan apabila dikemudian hari ternyata tidak benar maka saya bersedia di tuntut sesuai Hukum yang berlaku

Pasuruan, 13 April 2017

Mengetahui
Kepala Desa

Yang Menyatakan

Figure 7.1. A letter from village administration declaring that a person is not legally married

Yet another transgression was committed in case of Syamsul. Syamsul's problem arose from his divergent birthdates. The *penghulu* ensured a synchronization of dates. Interestingly, these dates were not necessarily based on the real situation. When there is a conflict of data, the validity of the data is usually based on other data obtained from a diploma. The argument was that it is uncommon to change the data on a diploma, but it is not that difficult to change the data in the civil registration documents as long as another legal proof can be produced. Since the government implemented the NIK (Nomor Induk

Kependudukan, single identity number) policy, the validity of the data has become a crucial issue. To give an example, now a parent cannot easily change the birthdate of their son or daughter to obfuscate child marriage ensure qualification for marriage registration, because a KUA official will check his/her birthdate in the civil administration office database. So, if he wants to pursue his nefarious purpose, he has to make the change at the civil administration office by presenting reasonable arguments and adequate evidence to convince the officials there to do so. For this reason, since 2015, the NIK of a couple and the *wali* is written on the marriage certificate and the KK also mentions the marriage date. Below is empirical evidence of this practice.

Syamsul was born in 1993. However, the KK and his diploma gave different versions of his birthdate. I clarified this with the *modin* and he said that neither versions was legally valid. The birthdate on the diploma had been noted by the teacher at primary school because Syamsul's parents had not submitted a birth certificate when he was first registered; the birthdate in the KK had been entered by the parents. When he wanted to marry, Syamsul referred the birthdate on his diploma. This case suggests that a citizen can use marriage registration as an opportunity to synchronize all his or her personal details. This attitude is quite common among villagers. They usually come to the civil administration office to affirm their marital status as 'married', and take the opportunity to adjust the names and the birthdates according to the marriage certificate.

This section has shown the importance of a marriage certificate as a means to prove legal identity. However, because of the complexity of the documents required to obtain a marriage certificate, from time to time a *penghulu* has to commit an administrative transgression and turn a judicious blind eye. This transgression is an impromptu solution to a particular situation which has escaped the regulations. *Penghulu* execute a degree of autonomy and transform it into policy. In the following section, we turn to the way in which marriage registration is dealt with in religious courts. Does transgression take place there too?

5. *Isbat Nikah* by Islamic Courts

In the previous section, I paid attention to the roles played by *penghulu* and the KUA in marriage registration. We have seen how transgression is important in dealing with anomalies in the documentation required for marriage registration. Without this transgression, marriage registration would not be possible. Regardless of this solution, as I mentioned earlier, people in marriages which have not been sanctioned by state legality can request retrospective legitimization by applying for *isbat nikah* from the religious court. This section will elucidate how *isbat nikah* works. In the Bangil Religious Court, *isbat nikah* appears to be a very workable solution for people who need to declare the legal status of the children but it is not the only solution. In the case of Abdulloh above, he did manage to register his unregistered marriage at the KUA. If he had just wanted to have state recognition for his children, he could have opted for the the judicial instrument known as legalization of children's status (*asal usul anak*). An explanation of this child legitimation follows.

There are varied reasons people might have not registered their marriage. Any correlations with economic or other factors such as access to the office are not very convincing. No one would that dispute that marriage registration is not affordable. In Sumbersari, the KUA is located at the heart of the sub-district and it is not that difficult to access the office. As far as I could see, almost all first marriages are registered because they are handled by *modin*. Most of the time, non-registration arises in cases of remarriage. If we look at the data in Sumbersari in 2015, 77.58 percent of all marriages were first marriages, while 22.42 percent were remarriages for either for one or both spouses. In 2016, the data indicates pretty much the same number. First marriages made up 77.07 person of all marriages, while 22.93 percent were remarriages. My materials indicate that 67.47 percent in 2016 and 76.65 percent in 2017 of all remarriages were between people who had been divorced. In 2017 32.53 percent in 2016

and 23.46 percent in 2017 were of people whose previous spouse was deceased.[131]

The Marriage Law stipulates that women cannot register a remarriage as long as their divorce from their first husband has not been processed by the court. Although people now often register their first marriage, they fail to go through the relatively complicated process of judicial divorce when they break up. Consequently, under state law, they are still married to the spouse from whom they have divorced in a socially accepted manner. On this basis, we can conclude that unregistered marriage is influenced by two factors. Firstly, if one of the spouses has a legal reason not to register, this will almost certainly be the absence of a divorce decree. Secondly, local norms pertaining to the legality of marriage, derive predominantly from religious doctrine, and this clearly contributes to the reason certain marriages are not registered. It seems that there is no urgency to register a remarriage as long as it has conformed to Islamic principles and, hence, is socially acceptable.

The KHI regards marriage registration merely as an administrative obligation but does emphasize the solid legal status of marriage when it is registered. The legal draftsmen have included an article on *isbat nikah*. This article was included to help those who had not yet registered their marriage as required by the marriage law when it came into force.[132] In practice, however, because the formulation of the provision in the KHI is ambiguous, judges also apply this legal norm legalize marriages which occurred after 1974 retrospectively. Article 7 (2) of the KHI states "In the context of marriages that do not have a marriage certificate, one can ask for an *isbat nikah.*" The KHI then explains the types of marriages eligible for *isbat nikah*. These conditions are: a) a marriage in which the spouses are seeking a divorce; b) the loss of a marriage certificate; c) doubts about whether or not a marriage is valid; d) a marriage concluded prior to the 1974 Marriage Law; and e) a marriage concluded by those

[131] This data is collected from SIMKAH KUA Sumbersari

[132] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.

who have no legal impediment according to the Marriage Law. Nurlaelawati has noted that these provisions are phrased ambiguously and are indecisive about who is qualified for registration by the Islamic court. She argues that the loose implementation of the marriage registration provisions contradicts the stated goal of marriage registration itself because non-registration can easily be registered retroactively.[133]

5.1. Polygynous Marriage

In the Bangil Religious Court, there is an irrefutable correlation between *isbat nikah* and legal identity. *Isbat nikah* appears to present a workable solution for those wishing to claim legal identity for their children. Almost all *isbat nikah* cases are driven by the need to obtain children's birth certificates. This is what happened to Pak Salim. He works as an official in the village administration. Pak Salim was married to Samsia in June 1990 but the marriage was not performed by a marriage registrar. It was actually not the first marriage for Pak Salim who was already married to another woman. In short, this was unregistered polygyny. Pak Salim, who has a son with Samsia, wanted to claim a legal status for his child as he thought that his son had the potential to make a good career. In fact, he was planning to apply for the military and needed a birth certificate mentioning the names of both his parents (*asal usul*). In the absence of the marriage certificate of his parents, the son could actually apply for a birth certificate, but it would only mention the name of his mother. This is definitely not enough for the requirements demanded when applying for a position as a civil servant or to join the military.

In his hour of need, Pak Salim turned to a *modin* to help him. The *modin* suggested he request an *isbat nikah* from the religious court. Of course, this contravened the conditions enshrined in the KHI. The purpose of *isbat nikah* is not to legalize a polygynous marriage. Nevertheless, the *modin* went ahead with all the necessary arrangements to make this mission possible. A letter of application

[133] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, pp. 202–3.

(*surat permohonan*) was drawn up to expedite this purpose. In the letter, the status of both Salim and Samsia is declared to be unmarried (*perjaka* or *perawan*). The letter clearly states that the applicants need a marriage certificate to have the legal certainty (*kepastian hukum*) that they could use it to apply for the birth certificate of their son. Pak Salim also included a letter from the village head declaring that their marriage had never been registered before.

I asked the *modin* who assisted Pak Salim why he had acted as he did as the matter involved a polygynous marriage. The *modin* argued that proposing to obtain an *isbat nikah* of the marriage would serve the bigger *maṣlaḥa* (common good). He backed up his statement by associating *isbat nikah* with an Islamic legal maxim: If many *maṣlaḥa* contradict one another, the one offering the greatest benefits should be prioritized. If many wrongs contradict each other, the lesser of these evils should be given priority.[134] The legal status of polygyny should be accorded less significance because legalizing the marriage would bring a bigger benefit. He was well aware that Pak Salim's son required his parents' marriage certificate so that he could have a birth certificate mentioning the names of both his parents.

Most court hearings are usually quite short, around 15-20 minutes, and the judgement is read out directly at the end of the hearing. However, perhaps because I was attending the hearing, the judges tended to stick to the procedure more strictly. The hearing was then adjourned for a week before being reconvened to hear the result of the *musyawarah majlis* (judge deliberation). This hearing was presided over by three judges, one of whom was female. In the court hearing, the judges asked Pak Salim about how the marriage had been concluded. He explained that it had been conducted by Ustad Syafi'i in the presence of Samsia's father, the *wali* and two witnesses. The judges also asked about Pak Salim's relationship with Samsia, specifically if they had a degree of consanguinity which made it unlawful for them to have sexual intercourse. In Islamic law, this relationship is known as *mahram*. It delineates the prohibited degrees of consanguinity within

[134] Interview with Haji Misbah, January 2019.

which marriage or sexual intercourse would be considered illegal. Pak Salim replied that they did not. The judges also asked them if the marriage would have no social consequences and that no one would have any objection if their marriage were legalized. Again, Pak Salim answered that the marriage was fine as far as the local people were concerned

Pak Salim presented two witnesses to support his claim. The night before, the *modin* had coached them in potential questions and the answers they needed to give. The judges invited them to enter the courtroom one by one. After they had taken the oath, the judges asked for their identity and about their relationship with the applicants. After this, the judges asked if they had known about and attended the marriage at the time it was concluded. They answered in the affirmative. The judges moved on to the next stage which was asking them if they thought the marriage would cause any social problems. They also verified if there was no close kinship relationship between the applicants. This was followed by questions about the religious status of the applicants; whether or not they were converts to Islam. Although the legal status of the applicants had been registered as unmarried, the judges still questioned them about their marital status. The witnesses said that both Pak Salim and Samsia were unmarried. This prevarication meant that the witnesses were hiding the fact that it was a second marriage for Pak Salim. Eventually, both witnesses convinced the judges that the right decision was to legalize Pak Salim's marriage because he needed the marriage certificate to acquire a birth certificate of his son.

This application was finally accepted.[135] A week later, the judges declared that there was no conflict between all the information given by the applicants and the witnesses. The decision asserted that the marriage had been conducted according to both Islamic law and national law, had no relationship with other marriages and had not been concluded within the period of '*iddah* (waiting period). It then affirmed that the family led a harmonious existence and that a son had

[135] Verdict no. 0091/Pdt.P/2018/PA.Bgl.

been born. As its legal basis, the decision mentions Article 2 of the Marriage Law which states a marriage is valid when it has been concluded according to the religious requirements of the parties involved. It also referred to Article 14 of the KHI on the conditions of marriage in order to declare that the marriage had met all the requisite conditions. To strengthen its legitimacy, the decision also referred to the Shafi'i classical treatise on *fiqh*.[136] It quotes a statement from the well-known Habib Muhammad al-Masyhur's *Bughyat al-Mustarshidīn* which says "*faidhā shahadat lahā bayyinah 'alā waqfi al-da'wā, thaabatat al-zawjiyya*" (if the witnesses have supported the claim, then the marriage should remain as it is).

An important point is the judges pragmatically used of Article 7 (3) Point e of the KHI to approve the claim. In most *isbat nikah* verdicts, the role played by Point e is quite critical. As long as the marriage is proved to have been concluded between people who have no legal impediment to their matrimony, the judges must accept it. Indonesian legal scholars have problematized this point because they see it as conflicting.[137] Point d clearly sets the limits for *isbat nikah* at marriages concluded prior to the legal obligation of marriage registration came into force . The Law on Religious Courts also limits *isbat nikah* to marriages before 1974. However, in this case, the verdict ignored this limitation and sought confirmation by citing Point e Article 7 of the KHI. Point e opens the door for all marriages, without any restrictions, to request an *isbat nikah*. The judges used this 'ambiguous' point to legitimate their decision.

The verdict also argues that unregistered marriages cause severe problems in society. Interestingly, the decision also relates the claim to

[136] This fact confirms Nurlaelawati's finding that, in the judicial practice of Islamic courts, a *fiqh* book is important in the decision making. She claims that some judges argue that, because the KHI has not been accorded statutory status, its legal position is the same as that of the *fiqh* books. In this reference to the *fiqh* books, the judges seem to have elevated the KHI to the status of an unwritten source, like that of the *fiqh* books, and they feel that the *fiqh* books embrace a more certain legal position. Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 163.

[137] Euis Nurlaelawati, 'Pernikahan Tanpa Pencatatan: Isbat nikah Sebuah Solusi?', *Musâwa*, vol. 12, no. 2 (2013), pp. 261–77.

the problems of citizenship and child protection. In this particular instance, the judges also used the Law No. 23 of 2002 on Child Protection to legitimate their decision. The elucidation to this law states that parents, family and society are responsible for protecting children and providing facilities for them. It was drawn up with the idea of ensuring the best life for children so as to make them potentially, capable citizens whose nationalism is based on good behaviour. The judges concurred with the reason submitted by the applicant that the *isbat nikah* was required in order to seek a birth certificate, presented as a guarantee of the protection of a child. Quite clearly, the judges incorporated citizens' rights into their judicial practice.

The accommodation of citizens' rights in the judicial decision has been a matter of heated debate among scholars. Judicial practice in religious courts in Indonesia has undergone significant changes. Although Van Huis looks at the decline of the *fiqh* tradition, that is *khul'*, in the legal practice of divorce in religious courts,[138] he does not overlook the fact that *fiqh*-based divorce mechanisms can still play a significant role. This finding is quite similar to Nurlaelawati's study in which she found the judges are committed to *fiqh* as the right and proper means to secure religious identity. Nevertheless, Van Huis suggests that most of the elements in current wife-petitioned judicial divorces have their roots in the *syiqaq* divorce mechanism, not in *khul'* as practised in the past. Both the Supreme Court and the 1989 Law on the Islamic Courts interpret the meaning of the phrase 'continuous and irreconcilable marital discord' in a manner close to that of *syiqaq*.

In the Bangil Religious Court, *isbat nikah* cases are few and far between. There were six cases in 2016, none in 2017 and seven in 2018. In interviews, the head of Bangil Religious Court said: "*Kebutuhan masyarakat dilayani saja*" (we just there to serve the people's needs).[139] He qualifies *isbat nikah* as one of these. He expounded on his view by saying that in principle the court cannot

[138] Stijn van Huis, *Khul' over the Longue Durée: The Decline of Traditional Fiqh-Based Divorce Mechanisms in Indonesian Legal Practice*, vol. 25 (2018), pp. 1–25.
[139] Interview with Pak Purnomo, the head of Bangil religious court, January 2019.

reject applications submitted by members of the society. This attitude raises the problem of whether or not the application is based on sound legal proof and this is, if it can be proved that a marriage had met the conditions of marriage stipulated by Islamic law. This solution conforms to Rosen's concept which argues that the concept of law is a manifestation of a larger socio-cultural reality, simply referred to as law as a culture.[140] Studying the local Sharia court records (*sijill*) in the city of Sefrou, Morocco, he found that nether the oaths sworn nor the use of professional witnesses were not truly objective, but the outcome of the *qadi*'s construction and the result of a process of negotiation which allows him to make convenient decisions.[141] His finding therefore situated the *qadi* in a wider cultural dimension in the city. In Bangil, the judges were perfectly well aware that unregistered marriages are a common practice. The state has no choice but to accord them legal recognition when it is requested. Any application of a strict interpretation of the conditions of *isbat nikah* does not address problems in society. The judges pragmatically implemented Point e of Article 7 of the KHI in order to accommodate the applicant's wishes.

5.2. Underage Marriage

Isbat nikah appears to be a legitimate solution to the legalization of unregistered marriages. The above case demonstrates how *isbat nikah* was used to legitimize a polygynous marriage. In the following case, we see *isbat nikah* was also an effective instrument in legalizing a marriage which contravened the law because the groom was underage. This was a marriage between Hasan (17 years) and Jamilatul (17 years) which took place in January 2013. Although the groom was not yet nineteen which is underage according to the state law, his parents did not request a marriage dispensation. Their reason was that the bride was three months pregnant. This pregnancy does not make any sense as a reason, but it is in fact mentioned in the decision. The child was born in June 2013. The couples applied for an *isbat nikah* in early 2014 because they needed to raise the legal status

[140] Lawrence Rosen, *Law as Culture: An Invitation* (Princeton: Princeton University Press, 2006).
[141] Rosen, *The Anthropology of Justice: Law as Culture in Islamic Society*.

of their daughter. The judges eventually granted a legalization of their marriage. They seemed to ignore the fact that, at the time, Hasan was still underage and not legally eligible to enter into a marriage. [142]

Article 7 of the Marriage Law provides leeway for those who entered into underage marriages to request marriage dispensation. However, there is a tendency in Islamic courts not to make this dispensation too easy to acquire. In my interview with Wahyu Widiana, the former Director-General of Religious Courts under the Supreme Court, he expressly stated that he suggested judges should be stricter in their acceptance of petitions for marriage dispensation. His argument for taking this stance was that, in a normal situation, such a marriage was undesirable. However, as he saw it, besides dispensing justice, religious courts should also educate people in legal matters. If for some reason a delay of the marriage is unavoidable, they still have the option to ask for an *isbat nikah*.[143] This view was confirmed by Pak Purnomo, the head of Bangil Religious Court. He argues that religious courts are put on the horns of a dilemma when a petition for marriage dispensation is submitted. Nevertheless, the judges are still inundated by complaints from women activists who say that they are far too ready to grant the dispensation. In his view, marriage dispensation should only be granted if the bride has been proven to be pregnant on the basis of a letter from a doctor.[144]

The verdict in this case also problematizes whether or not the marriage deserved an *isbat nikah* (retrospective legalization) because it was concluded in 2013. The verdict begins by emphasizing that only marriages conducted before the issuance of the 1974 Marriage Law are eligible for retrospective legalization, but then proceeds to clarify that Article 7 (3) Point e in the KHI does open the possibility legalizing of all marriages submitted for their consideration. In a nutshell, the verdict declares that such a marriage is eligible for state legal protection. Furthermore, it also confirms that the Law on the Age of Marriage is intended to protect the rights of children as stated in

[142] Verdict no. 33/Pdt.P/2014/PA.Bgl.
[143] Interview with Wahyu Widiana, November 2018.
[144] Interview with Pak Purnomo, January 2019.

Article 3 of Law 3/2002 on Child Protection. The judges were perfectly well aware that legalizing a marriage in which the bride is underage violates the law. However, they thought that prioritizing the rights of the son was even more important.

Even more interestingly, the judges argued that the absence of an affirmation of a legal age for marriage in classical Islamic law is not an omission. They consider marriage a biological need of humanity, concluded not only on the basis of maturity and logic but to constrain the biological urges of the individual which can be observed from the biological signs of physical maturity. Nevertheless, the fulfilment of the sacred and noble objectives of marriage is a necessity. In this argument, the judges seem to be tending towards ambivalence. On the one hand, they are definitely adhering to the state law but, on the other, they are ignoring the marriageable age enshrined in the Marriage Law by proposing arguments from viewpoint of Islamic law. In the end, the judges did accept the application and granted legalization of the marriage.

Legal anthropologists emphasize the multiplicity of legal bases and institutions which co-determine the structure, norms and interpretations of the law.[145] *Isbat nikah* provides a space in which judges can exploit the plurality of legal orders.[146] The judges examined 'the dialectic, mutually constitutive relation between state law and other normative orders'.[147] Legal pluralism is justified on pragmatic grounds as a technique of governance.[148] From the decision handed down, we see that the law offers a legitimate frame of reference in which political, economic and legal interests can be defended.[149] The judges also found it important to be able to consult a different legal

[145] Fernanda Pirie, *The Anthropology of Law* (Oxford: Oxford University Press, 2013).
[146] Arskal Salim, 'Dynamic Legal Pluralism in Indonesia: Contested Legal Orders in Contemporary Aceh', *Journal of Legal Pluralism and Unofficial Law*, vol. 42, no. 61 (2010), pp. 1–29.
[147] Sally Merry, 'Legal pluralism', *Law and Society Review*, vol. 22 (1988), pp. 869–896.
[148] John Griffiths, 'What is Legal Pluralism?', *The Journal of Legal Pluralism and Unofficial Law*, vol. 24 (1986), p. 5.
[149] Keebet Von Benda-Beckmann, 'Transnational Dimensions of Legal Pluralism', in *Begegnung und Konflikt – Eine kulturanthropologische Bestandsaufnahme*, ed. by Wolfgang Fikentscher (Munich: C. H. Beck, 2001), p. 44.

norm, that is, traditional *fiqh* or theological doctrines. However, this this is not to say that the judges were ultra conservative as they interpreted these sources liberally to support their judgement.

6. Child Legitimation

Is it possible for Abdulloh's children who were born before their father's registered marriage to acquire legal status as a 'legitimate' child? The answer is definitely yes. As I have mentioned earlier, spouses in a marriage which has lately been registered at the KUA can still make an application to have the status of the children legalized. This is pursued through a legal procedure called legitimation of children (*asal usul anak*). I have observed that this tendency has become an alternative solution for those who do not petition for an *isbat nikah* or do so only to have it rejected. The Indonesian judicial system grants the religious court the judicial authority to examine and declare the legitimacy of children.[150] In most cases, these children are born in an unregistered marriage. In the Bangil Religious Court, the number of the case of *asal usul anak* does not differ much that of *isbat nikah* cases. There were six cases in 2016, eight in 2017 and six in 2018.

In this section, I would like to analyse the legal reasoning applied by judges of religious courts in granting a decision in an *asal usul anak* case. In this analysis I turn to Verdict No. 230/Pdt.P/2016/Pa.Bgl. The application was submitted by Nizar and Jubaidah.[151] They were married religiously on 30 April 2003 and later had two children. The first child was born in 2005, while the second was born in 2007. On 9 December 2016 they applied for a registered marriage at their local KUA. Bringing with them their children's birth certificates (*surat keterangan kelahiran*) issued by the village administration, they submitted a request for the children to be legitimated by the Bangil religious court.

[150] See the Elucidation of the Law No. 3/2006 on Religious Courts Number 37 Point (a).
[151] Verdict No. 230/Pdt.P/2016/Pa.Bgl.

At the time he married Jubaidah, Nizar was informally divorced. Because it was an informal divorce, his marriage to his first wife was still legal according to state law. His first wife petitioned the religious court for a divorce some months after his remarriage. Some months later, Nizar submitted a request for *isbat nikah* to validate his remarriage to the Bangil Islamic Court. The court rejected his request because he could not be recognized as legally divorced. The judges considered his marriage to Jubaidah was not a remarriage, but a polygynous marriage. The judges took only written legal proofs into consideration. Their decision meant that Nizar could be married to Jubaidah only if he had permission to enter into a polygynous marriage from the religious court. The absence of this permission invalidated his marriage according to the statutory law.

It is worth noting that, before the 1974 Marriage Law was implemented, polygynous marriages did not require the permission of an Islamic court. Marriages and polygynous marriages had to be registered, but this registration was just considered an administrative obligation, not a requirement for a valid marriage. In my interviews, one of the judges argued that he and his colleagues often rejected a request for *isbat nikah* because the marriage had been concluded prior to the issuance of a divorce certificate terminating the previous marriage.[152] He acknowledged that this was tricky situation, especially when it happens to the woman, because a wife cannot have two husbands at the same time.

Although *nikah sirri* is not legally recognized in the Indonesian legal system, the judges still thought it important to examine the religious validity of this marriage, to discover whether or not it has been in accordance with Islamic law. The judges asked the parents, Nizar and Jubaidah, about who had acted as the marriage guardian, the witnesses and who had attended the marriage ceremony. The trouble they took shows that an unregistered marriage is considered valid by

[152] Interview with Pak Rasid, a judge of Bangil Religious Court, January 2018.

Islamic courts.[153] This examination was undertaken because, despite this case being *voluntair* (petition, *gugatan permohonan*), which did not demand other parties rebut it, the judges were still required to examine whether or not the parties had an adequate reason to petition. Therefore, the judges examined the unregistered marriage and, on the basis of their conclusions, validated it. They did not asses the (second) registered marriage. Van Huis has found that marriage legalization can be rejected by an Islamic court if the said marriage fails to meet the religious requirements.[154]

The judges also asked them the reason they wanted this legitimation of their children. Their verdict states that they wanted to acquire the birth certificates of their children. This reason was more than enough for judges to go ahead with the hearing. The judges referred to Article 49 in the Law 3/2006 on Religious Courts and its elucidation which states that a religious court is authorized to adjudicate on this case. The parties presented proofs which included the letters from the village head declaring the birth of their children. As part of legal reasoning, the judges referred to a Prophetic tradition which asserts "children born are to a man who has a wife (*al-waladu li al-firāsh*) and death by stoning is for indulging in extramarital relations (*wa al-ḥajaru li al-'āhir*)." The judges also considered the common good (*maṣlaḥa*) as well as the harm (*mudarat*) which might ensue in the future if they did not accept this petition.

The judges confirmed the legal status of the children with a reference to Article 99 in the KHI which stipulates "a legal child is who is born within or as a consequence of a valid marriage". In another case, the judges also referred to Article 103 of the KHI. This article is specifically about *asal usul anak* (the legal origin of the child). It says that *asal usul anak* is proved by a birth certificate. However, in the absence of a birth certificate, the religious court might be able to issue

[153] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws'; van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 97.
[154] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 228.

a declaration confirming the legal status of a child after carrying out an examination of relevant proofs. On the basis of the declaration of the religious court, the civil administration can issue a birth certificate.

In this section, I have argued that the legitimation of children is the last resort for a family. The decision made by religious courts is essential as it serves as a legitimate basis for the issuance of a birth certificate. No necessary judicial discretion is exercised by the judges during the hearing. They just accept both the letter of birth issued by the village administration and the marriage certificate issued by the KUA as the legal evidence on which to base their decision. In addition, these suggestion put us on safe ground to suggest that the Islamic court has interpreted the 1974 Marriage Law and the 1991 KHI in a relatively liberal way. This progressive stance is believed to have considerable influence on their legal reasoning. It is relevant to relate this situation to Bowen's remarks that gender equality, fairness and consensus-seeking are an integral part of legal reasoning in Indonesia.[155]

7. Conclusion

In this chapter, I have shown some of the different paths villagers can take in order to legalize their unregistered marriages and their children. It seems that they are not concerned about whether or not their marriages are legally valid according to the national laws. As long as the marriage is socially accepted, they feel content. Scholars have emphasized how much more heavily the significance of social acceptance weighs than considerations of state legality.[156] However, they are brought back down to earth about the need for a legalization of marriage when their children require a birth certificate which cannot be issued without the marriage certificate of their parents. Several paths are open to them.

[155] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 257.
[156] Sonneveld, 'Rethinking the Difference Between Formal and Informal Marriages in Egypt'; Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism'.

The first is to have a 'new' marriage ceremony at the KUA in the presence of a *penghulu*. This marriage is usually undertaken solely for the sake of obtaining the marriage certificate and is, of course, meaningless as far as the legal status of the children is concerned. A number of issues pertaining to transgressions are inevitably part and parcel of this process. As a street-level bureaucrat, a *penghulu* needs to exercise his autonomy in drawing up policy in each individual case to enable a particular marriage to be legally recognized. The second path is that of to seek legalization by submitting a petition for an *isbat nikah* to the Islamic court. In fact, *isbat nikah* is an important construct to legalize a marriage, a process which would be otherwise impossible according to standard procedure set out in state law. This category includes polygynous and underage marriages. Of course, such matters require the utmost discretion of the judges, who tend to work pretty much in line with the procedural law. However, the decision to approve a legalization is principally based upon whether or not a marriage has been concluded in line with Sharia law coupled with considerations about the extent to which the marriage impinges on social relationships. This still leaves the problem of the legal status of the children. Parents who opt for the first choice and safely navigated it, will then be in the position to take yet another step to legalize their children. With their new marriage certificate as proof, they can submit a request to the religious court asking that their children be legally recognized.

The registration is the responsibility of the KUA while the legalization procedure can be carried out by the Islamic court. This shows that it is often the lowest level of the state administration which is crucial to providing a legal identity to those who would otherwise not qualify.[157] Moreover, these observations show that the way *isbat nikah* works is closely interwoven with Nurlaelawati's finding. She remarks that, in many cases judges find it hard to apply the rules which they should formally abide by. Because these judges do not have the power to force society to adhere to the state law, they show the

[157] Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.

tendency to go along with the temporal interests of those seeking justice in the courts, although they do so in contravention of the rules as interpreted by the state.[158] In this instance, the judges prioritize the public good rather than applying the letter of the law.

These different paths should be understood as the district-level bureaucracy's strategy to regulate marriage and family. Those administering government on a lower level are aware that the strict imposition of a legal norm on the legal obligation to register a marriage has been far from successful. Nevertheless, it is impossible to leave unregistered marriage as it is. Therefore, in order to protect citizens' rights, these different solutions have been made available. Furthermore, checking on a marriage by the state is an tricky task in a country like Indonesia in which there is a wealth of perception of both the national law and Islamic law current in Muslim society. In response, the Indonesian legal system provides a wide playing-field of ample legal and judicial opportunities to solve the problems which arise as long as these support its effort to control. When it is set in motion, these opportunities lead not only to administrative transgressions and the exercise of judicial discretion, but also to overlapping authorities. Both the judges of Islamic courts and the *penghulu* of the KUA are street-level bureaucrats who, according to Lipsky, are "the focus of citizen reactions because their discretion opens up the possibility that they will respond favourably on behalf of people."[159] The discretion is not only the outcome of the absence and the vagueness of the legal norms, it is also a deliberate interpretation made by public officials and judges.

[158] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 224.
[159] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*, p. 9.

Conclusion

This study has approached Muslim marriage from an array of different perspectives. It has examined how the Indonesian state has endeavoured to regulate Muslim marriage and how a local society in East Java has gone about dealing with the subsequent changes. I have looked not only at the law as interpreted by the central state, but also at the law as perceived and implemented by different actors on the lower strata of society, namely: ordinary people, judges, marriage registrars and religious leaders. Following Sally Moore, I have simultaneously looked at the rules, the occasions on which they are communicated and invoked what actual behaviour they have had to address, the contexts in which this takes place and the ideas and assumptions which have accompanied their introduction.[1] This has yielded a number of insights which I have discussed in the chapters of this thesis and which I shall now re-address in this conclusion. However, I would like to begin by setting out the key findings of my study.

The enactment of the Marriage Law, particularly the obligation of marriage registration, has still left some leeway in which informality can function. Berenschot and Van Klinken have remarked that, in post-colonial states like Indonesia, the experience of state-citizen interaction depends not just on the content of the law but also on the

[1] Sally Falk Moore, *Law as Process: An Anthropological Approach* (London: Routledge & Kegan Paul, 1983), p. 3.

strength of personal connections.[2] This informality has certainly shaped the practice of marriage registration, which initially presented a major problem as it has inexorably led to the bureaucratization of Muslim marriage.[3] The idea of marriage registration as an element of social reform militates against the convictions of conservative Muslims who believe that Muslim marriage should be regulated by *ulama* (religious leaders) only, not by the state. In this study, I have discovered that this informality has produced a mediating sphere which contains the potential to align state law and religious law, allowing people to adjust their religiously oriented attitudes to the state law. Informal religious leaders, represented by *modin* (informal religious leaders on the village level who are in charge of marriage) are the main actors in this sphere. Their role is key to helping citizens negotiate their interest in obtaining state recognition and to facilitate their ability to realize their rights. On the central government level, this informality is mistakenly viewed as corruption and therefore rejected. It provided an excuse for the government to remove the *modin* from the governmental apparatus. However, the local levels of government (district and sub-district), as in East Java, prefer to keep these informal actors in place in order as it is realized that they assist in aligning people's behaviour with the state legal framework.

Put in more general terms, the legal reform introduced in the marriage law was intended to facilitate state control of marriage practice and reinforce state authority, one part of which was eradicating informality. The central government assumes that the lower levels of government are capable of building a direct relationship with ordinary people without necessarily involving intermediaries. However, in practice, it does not work that way. Effective marriage registration needs these intermediaries, particularly in communities in which religious leaders command great respect. Nevertheless, the Marriage Law still defines marriage as a religious ceremony. In these communities, marriage registration includes two inseparable dimensions. Firstly, it is just an

[2] Berenschot and van Klinken, 'Informality and Citizenship: The Everyday State in Indonesia'.
[3] Nisa, 'The Bureaucratization of Muslim Marriage in Indonesia', p. 309.

administrative matter. The second dimension has to do with aspects related to the religious validity of a marriage and the proper conclusion of a marriage ceremony. Some state *penghulu* are considered to lack the religious legitimacy to be able to perform the second dimension. Traditionally *modin* do have such legitimacy. This is why informality has survived.

While these findings might seem to indicate a competition between state and local religious leaders, I want to underline that the relationship between the state and religion in Muslim marriage – at least in the cases I examined - is actually a matter of mutual adjustment. Religious authorities do indeed accept the state's intervention in marriage law, if this is limited to marriage registration. Simultaneously, local people are increasingly eager to register marriages as this makes them eligible to have access to the state services. Of course, there is a small segment of religious leaders who oppose the state law, especially those who do not accept the democratic foundation of the nation-state and propagate the idea of a so-called Islamic state'. However, the large majority can accept some level of intervention of the nation-state in Muslim marriage if two conditions are met. Firstly, the state law cannot challenge the fundamental principles of Sharia law or introduce something impermissible according to classical understanding of Sharia law, such as allowing same-sex marriage or totally prohibiting polygyny. However, this is hardly ever the case in Indonesia as to a large extent the legal reforms have taken into account what is permissible and impermissible according to the common understanding of Sharia law. Secondly, when the state law is too rigid to deal with some particular practices which are socially and religiously acceptable, when religious law is applied. To local people, religious law is a more responsive instrument for handling problems of sexual morality such as *zina* (extra-marital sexual relations) and teenage pregnancy. They prioritize the religious validity of marriage rather than its legal validity.

In response to the continuing informality and the uneasy relationship between the state law and religious law, the state officials in charge of marriage registration on the frontier levels, namely: the

sub-district office of Muslim marriage registration and the Islamic courts, are amenable to adopting a lenient approach towards regulations on marriage.[4] They do not interpret and implement the rules strictly. This attitude is of great assistance to those people who want to seek state recognition of their marriages so that they can have access to their citizens' rights. The lenient approach applies in particular in two conditions. Firstly, as a street-level bureaucrat of marriage registration, *penghulu* at the KUA (Kantor Urusan Agama, the Office of Religious Affairs) are willing to register an unregistered marriage. Their acquiescence means that people do not have to file a formal request for the legalization of their unregistered marriage with Islamic courts as decreed by the law. Here, *penghulu* transgress the rules on marriage registration in the name of humanity. Secondly, judicial practice also shows that judges resort to judicial discretion in the case of *isbat nikah* (retrospective marriage legalization) to prioritize the interest of the weaker party. [5] These differences in interpretation between the central government and the lower levels of government lead to legal plurality within the state. However, the existence of these legal mechanisms is the key to secure the functioning of the state law. In practice, if lower levels of government and judges of Islamic courts did not do this, people would turn away from the state.

The willingness of the state officials to give a less than strict interpretation of legal rules on personal status has become a major trend in other Muslim countries as well. In the case of Tunisia, Voorhoeve remarks that, despite the 'progressive' direction of the legal reform of its family law, the state-promoted family law is relative because there is much diversity in its application. Judicial discretion exists on different levels.[6] Vincent-Grosso has also indicated the same. In the Tunisian divorce court, because of the complexity of documents

[4] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 263.
[5] It is worth noting that the procedure for *isbat nikah* as set out in the KHI was initially meant to be a transitional article for those who had not yet registered their marriage prior to the ratification of the Marriage Law. Bedner and Huis, 'Plurality of marriage law and marriage registration for Muslims in Indonesia: a plea for pragmatism', p. 187.
[6] Voorhoeve, 'Judicial Discretion in Tunisian Personal Status Law'.

brought to the court, the judges find it difficult to make a decision within the law. Consequently, the judges use the personal narratives of the litigants in making their judgement.[7] In addition, in the Egyptian context, Lindbekk suggests that the judicial practice has developed its own order of discourse. She argues that the judicial practice in divorce shows a move towards increased standardization in the implementation of family law. This standardization has come about through a closer union between law and religious morality.[8]

The abovementioned findings are the most fundamental issues of the four points which constitute my study. They are the legal reform on rules on marriage, the reform on the bureaucracy of marriage registration, changing social practices in marriage, the position of *penghulu* and the legalization of unregistered marriage. What follows are more detailed conclusions of each of them.

1. Regulating Muslim Marriage and Public Debates

The first point involves the political, religious and legal debates about how Muslim marriage in Indonesia should be regulated. The legal reform of the marriage law has become an arena of contesting ideas between Muslim groups.[9] Within the framework of a nation-state, legal reforms of marriage in post-independence Indonesia concentrate on the debate about how the religious norms governing marriage can be transformed into state law (*hukum negara*), or what positive law should look like. The debate one of the linchpins of the debate is the question of what constitutes a valid (*sah*) marriage It centres on the demand common among Muslims in Indonesia that the codification of Islamic marriage law by the state should not reduce the religious character of marriage.

Historically speaking, family law reform in Indonesia has addressed sensitive issues such as polygyny, the minimum age of marriage and the legal obligation of marriage registration. Under the

[7] Sarah Vincent-Grosso, 'Maktub: An Ethnography of Evidence in a Tunisian Divorce Court', in *Family Law in Islam: Divorce, Marriage and Women in the Muslim World*, ed. by Maaike Voorhoeve (London: I.B. Tauris, 2012), pp. 171–98.

[8] Monika Lindbekk, 'Inscribing Islamic Shari'a in Egyptian Divorce', *Oslo Law Review*, vol. 3, no. 2 (2016), pp. 103–35.

[9] Bowen, *Islam, Law, and Equality in Indonesia: An Anthropology of Public Reasoning*, p. 10.

terms of the 1974 Marriage Law, the Indonesian state embraces the principle of monogamy but still provides room for those who wish to have more than one wife. Regarding minimum age, the Law has introduced the prescription that the bride must not be younger than sixteen years and the groom must be at least nineteen (now both changed to nineteen years). Before this law came into force, these two issues blew up into a heated debate between female activists and religious leaders in the early years of the twentieth century.[10] Up to now, the norms concerning polygyny and minimum age remain a subject of deliberation and negotiation involving state officials, religious leaders, feminist activists and other interested parties. Turning to the question of registration, the Marriage Law stipulates that marriage must first be solemnized in accordance with the religious teachings of the parties, after which the legal obligation of registration can be taken care of.

After the 1998 *reformasi*, the marriage law has increasingly been an arena of contestation between different groups in Islam.[11] On the sub-national level, we come across the politicization of Islamic issues. Several Islam-based regional regulations covering ruling on public morality have been enacted and these have complicated the procedure of Muslim marriage as stipulated by the national law. For instance, a local regulation obliges both the bride and the groom to be able to read the Quran. on the national level, the legal reform of Muslim marriage has been continued through the drafting of the bill on the substantive law of Islamic courts. The purpose of this legal reform aimed has been to introduce legal sanctions on those who do not register their marriage. This reform led to a public debate and certain Islamic groups urged people to resist it. The upshot is that the reform ended in a deadlock.

Earlier, the Civil Administration Law has introduced legal sanctions in the form of fines for those who fail to register their

[10] Susan Blackburn, *Women and the State in Modern Indonesia* (Cambridge: Cambridge University Press, 2004); Susan Blackburn and Sharon Bessell, 'Marriageable Age: Political Debates on Early Marriage in Twentieth-Century Indonesia', *Indonesia*, vol. 63 (1997), pp. 107–41.

[11] See Fauzi, 'Islamic Law in Indonesia: Recent Debates on Islamic Family Law in the Reformasi Era (1998-2007)'.

marriage, but these scarcely raised an eyebrow. Moreover, as Van Huis and Wirastri have argued, legal sanctions are never a sufficient deterrent to stop people opting for unregistered marriages.[12] Ironically, at the same time, the Ministry of Home Affairs drafted a regulation which assists people in unregistered marriages to obtain birth certificates for their children mentioning the names of both parents. Once again, this shows the ambiguity of the state when it comes to dealing with informality.

The debate on legal reform also involved *ulama*. They use their organizations and *fatwas* to claim and reinforce their religious authority. Their *fatwas* demonstrate how the concept of *maṣlaḥa* (public good) in Islamic law has become increasingly important in supporting the state to establish its control of marital relations. Despite its success, this *maṣlaḥa* orientation has been challenged by those Islamic groups which take a literal approach to classical Islamic texts. In the case of the registration of polygyny, such texts suggest that neither judges nor the state should exert exaggerated (*ishrāf*) control over personal relations.

In spite of these religious debates, the state is still determined to extend its power to control Muslim marriage in order to protect the rights of women and children. Therefore, legal reform is still work in progress. Recent legal reforms reveal that the judiciary and the civil bureaucracy have been busy securing this goal. At this point, the discourse on Muslim marriage no longer hinges on the religious and legal validity of marriage but is about the consequences of marriage registration for citizens' rights. I classify this new direction as a citizens' rights approach. In this approach, both members of the judiciary and the civil service are key actors. One important feature has concerned the judiciary's examination of the legal status under the Constitution of children born out of legal wedlock. Court decisions grant children born out of wedlock paternal recognition as long as there is sufficient proof that they have a blood relationship with the father, a decision which directly contravenes classical Islamic law. The

[12] van Huis and Wirastri, 'Muslim Marriage Registration in Indonesia: Revised Marriage Registration Laws Cannot Overcome Compliance Flaws', p. 14.

civil bureaucracy has also been seriously addressing the consequences of unregistered marriage for the registration of the birth of a child. Its efforts have led to the mapping out of a new policy, namely: letters of absolute responsibility (*surat pernyataan tanggungjawab mutlak*) which declare the religious validity of the marital relationship of the parents and hence the legitimacy of the child. Armed with these letters, the parents are able to claim the birth certificate of a child born out of legal wedlock. The letters can be used as a substitute for a marriage certificate, but they do not legalize the marital relationship of the parents. This policy would seem to have reduced the significance of marriage registration. In other words, this policy explicitly challenges the reason for the regulation of marriage registration. Nevertheless, by implementing this policy, the state is able to control marriage practice in society and bestow individual rights and obligations concomitant with national identity. Such a process is categorized by Peletz as an inseparable part of state formation.[13]

To sum up, a new trend in family law reform is currently underway in Indonesia. Instead of reforming the content of the Marriage Law, which inevitably ignites heated debates, the government has adopted a citizens' rights approach to deal with the problems arising from unregistered marriage. Far-reaching reforms of the rules on marriage have been achieved without secularizing the main elements of Muslim family law. These reforms are indirectly improving the position of women in the matrimonial sphere and protecting the rights of children. However, the issue of parents whose marriage is not legal under state law still face limitations in claiming certain citizens' rights is still the elephant in the room. The legal status of a marriage can only be proven by producing a marriage certificate. However, new obstacles have arisen as the citizen's approach, as I explained earlier, is undermining the importance of the marriage certificate. Nevertheless, despite this new development, the recompenses accruing from the possession of a marriage certificate still pressures people to comply with the state's regulation of marriage. On these grounds, it is safe to suggest that the legal debate about Muslim marriage in Indonesia has

[13] Peletz, *Islamic Modern: Religious Courts and Cultural Politics in Malaysia*.

shifted from the issue of the validity of Muslim marriage to the problems for citizens' rights caused by the consequences of marriage registration. Since its implementation of the citizens' rights approach, the government has become much more effective in managing marriage and controlling people's marital practices.

2. The Uneasy Reform on the Bureaucracy of Marriage

The second important set of findings of this study is related to the bureaucratization of marriage in the wake of the government insistence on marriage registration and the subsequent issuing of a marriage certifcate, considered to be the instrument which determines the legal validity of marriage. Failure to register a marriage makes a union legally invalid in the eyes of the state. The KUA, which is headed by a PPN (*Petugas Pencatat Nikah*, marriage registrar), is in charge of the registration of Muslim marriage. In the past, no special qualifications were needed to be appointed a PPN. Now, only a *penghulu* (a state religious authority who is responsible for concluding a marriage) can act as a PPN, a move which is part of the state's strategy to boost the legitimacy of the KUA.

Over the past few years, in efforts to improve its performance, the government has attempted to introduce bureaucratic reform in the KUA. This bureaucratic reform has been devised for the simultaneous attainment of two objectives: the government wants all its citizens to register their marriages and that this registration should not be dependent on religious actors operating outside the state framework. This reform was introduced after an incident in East Java in which a *penghulu* was sued for corruption just because he recorded the customary extra-legal payment he collected for conducting a marriage ceremony outside the office. Determined to eradicate this extra-legal payment, the government (the MoRA) issued a new regulation in 2014 which clearly differentiates between *nikah kantor* (marriage in the office) and *nikah bedolan* (marriage out of the office). *Nikah kantor* is free of charge because a marriage certificate is treated in the same way as other civil documents. For *nikah bedolan*, people have to pay Rp. 600,000-, replacing the contested informal payment, to cover the *penghulu*'s expenses.

However, the matter of extra-legal payment has not yet been properly solved. It is particularly complicated because it also linked to the position of the *modin* who, in the past, acted as the PPPN or P3N (*Pembantu Petugas Pencatat Nikah*, assistant of marriage registrar). *Modin* are usually persons with a high reputation for religious scholarship.[14] The MoRA decided to eliminate the institution of P3N in 2010. As a consequence, the P3N was no longer an official marriage registration functionary. The dismissal of P3N caused no problems in an urban community like in Yogyakarta in which dependence on *modin* was not particularly strong. However, it was less effective in rural contexts. Sumbersari in East Java provides a good example. Although the institution of P3N has officially disappeared, *modin* still survive. By involving *modin* in the process of marriage, people manage to combine the religious aspect of the marriage ceremony and the administrative aspect of the marriage registration. This kind of situation arises in most areas in East Java. Grijns and Horii have demonstrated that *amil* play a similar role in West Java.[15]

A similar reform has been the integration of the marriage registration into the civil administration. The thinking behind this reform was to prevent any modification of the ages of couples, usually of the brides, to make these comply with the Marriage Law. This reform has caused new problems. Although a bride might be legally underage, she, or her family, still seek state recognition of her marriage. Currently the government officials are unlikely to be prepared to negotiate in this situation because the system uses the data filed under a single identification number (NIK, *Nomor Induk Kependudukan*) to calculate her age. If her age does not comply with the legal requirement, the system will automatically reject the registration. Once again, *modin* are able to alleviate this situation by performing a religious marriage with a delayed registration, meaning that the marriage will be registered as soon as the spouses have reached the required minimum age.

[14] To become P3N, *modin* were appointed by the village head and then confirmed by the head of the KUA to assist the PPN in his work.

[15] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns'.

This series of reform lead us to the conclusion that the central government is heavily influenced by the idea of rationalization as defined by Weber.[16] In the eyes of the government, modern bureaucratic reform simply means eliminating values embedded in a religious/ethical context. Efficiency and effectiveness have been the keywords from the government's point of view. However, as I explained in Chapter 5, Muslim marriage can never be completely rational in Max Weber's sense, since it must invariably be based on core Islamic norms and values if it is to retain its Islamic character. Indeed, the success of the reform is indeed dependent on the situation prevailing in each society. For Pasuruan people in general, the involvement of a *modin* is fundamental because people consider the religious elements of a marriage more important than any requirements which might be imposed by the state administration. Unlike the *modin*, the state does not have the leeway to make suitable adjustments.

3. Present-Day Cultural Life in Pasuruan

The centrality of *modin* and religious leaders in general is reasonable if we look at how Islam extends its influence in the Pasuruan social life. Pasuruan is a regency in the province of East Java which is inhabited by a majority of Muslim communities which generally show a tendency towards practising the traditional Islam encouraged by the NU. This religious orientation draws strength from the fact that many Pasuruan residents have historical roots in the island of Madura. The migrants have acculturated with the Javanese, a mingling which led to a distinct sub-culture called *pedalungan* or *pendhalungan*. This community has been established on the basis of patron-client relationships in which *kyai* or the leaders of *pesantren* act as the patron. The commitment to practising Islamic traditions and the strongly inculcated obedience to religious leaders (*kyai*) have led to a complicated relationship between

[16] Tony Waters and Dagmar Waters, 'Max Weber's Sociology in the Twenty-first Century', in *Weber's rationalism and modern society new translations on politics, bureaucracy, and social stratification*, ed. by Tony Waters and Dagmar Waters (New York: Palgrave Macmillan, 2015), p. 4; Max Weber, *Economy and society: An outline of Interpretive Sociology*, ed. by Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1978), p. 889.

religion and the state. This social configuration appears to have infiltrated and influenced political life too.

Furthermore, Sumbersari, the area in Pasuruan in which I have been conducting my fieldwork, as is common in Maduro-Javanese areas, has to contend with an array of social problems, chief among them poverty and a tendency not to participate in formal education. This avoidance of the established formal educational system has made *pesantren* a central institution. *Pesantren* offer an alternative educational institution which is perceived to be adequate to fulfil their needs as it inculcates in students not only the knowledge they require to function in society but also instils religion and character-building in them. However, the winds of change are coming and in the last decade. *Pesantren* have been expanding their curricula to respond to a new aspiration, i.e. providing general knowledge and practical skills. This is coincident with the development on the national level which has shown a growing tendency for Islamic schools to be more open to change.

4. Everyday Practice of Marriage and the Functioning of the Bureaucracy of Marriage

The fourth set of findings in this study is centred on two issues: the everyday practice of marriage in a rural society and the functioning of the marriage registration bureaucracy - which is not the same as its bureaucratization, which I discussed in the previous section. I have put these aspects into the same category because both relate to how marriage is practised by local people. It encompasses how people perceive a marriage and determine whom and when to marry as well as how they perceive marriage registration.

In the eyes of the people of Sumbersari, and many others in Indonesia, marriage is a purely religious affair. It is a sacred ceremony people set tremendous store by the involvement of religious authorities, far more than they are bothered about state involvement. Nevertheless, despite the homogenous tradition of Islam in the area, I encountered internal heterogeneity of the relationship between agency of the actors involved, cultural norms and the social structure in the selection of whom to marry. It is important to note that, in all

social classes, the ideas about an ideal spouse have been shaped by the discourses circulating within traditional Islam. These ideas include preserving chastity (*kesucian*) and playing according to the rules (*apik*). *Pesantren* play an important role in maintaining this *fiqh*-based understanding of marriage. Being a *santri* (student of *pesantren*) is taken as a guarantee of the purity and good morals of a girl.

Marriage practice in Sumbersari shows that the negotiations in which these ideas are dominant are dependent on the role of the *pengarep* (traditional marriage broker). Entrusted with the principal role of mediating the communication of the two families concerned, the work of *pengarep* is mainly important to those families whose daughters have been educated in *pesantren*. In these families, girls have limited agency and restricted room when it comes to finding a suitable future husband. It is the parents, not always the father, who determine to whom and when they will be married to. The upshot is that arranged marriage is quite common. In this situation, marriage has become a marketplace in which a *pengarep* is essential to achieving the expectations of the parents.

Another key actor in marriage is the *kyai*. Marriage practice in Sumbersari shows the on-going centrality of the role of *kyai* in the production of an Islam-based legal norm to safeguard sexual morality. This is a tricky point as a decision based on these norms sometimes conflicts with the state legal norms. "Preventing harm (extramarital sex and unwanted pregnancy) should be the priority" is always the overriding argument presented. Differences of opinions between traditional *fiqh* doctrines are essential to the construction of the *kyai*'s legal reasoning, which should comply with the interests of the people concerned. From a social perspective, religious marriage has been an effective way to tackle the problems caused by religious morality and female sexuality when the state law is difficult to comply with.

In Sumbersari, modernity manifests itself in the form of increasing participation in formal education and the rise in female mobility. As the younger generations acquire more room to exercise agency in the selection of a possible spouse, the role of the *pengarep* will decrease. Nevertheless, even if girls do have the agency to find a suitable partner this does not mean that they can also determine the timing of the

marriage. In certain cases, the decision about the timing of a marriage is subject to the parents' authority. This is grounded on the idea of preserving the social honour of a family. Indeed, even if women are able to articulate consent to a marriage, they will still need to resort to religion-inspired reasons in order to justify their choices.

In Sumbersari a woman who has divorced informally (out of court) and wants to remarry will have no problem in finding an Islamic leader willing to marry her traditionally. This is in line with Van Huis' finding in Cianjur, West Java.[17] Furthermore, the centrality of religion and cultural norms corroborates earlier research findings. These issues are becoming more prominent as Sumbersari is being confronted with 'modern' development. As argued by Nancy Smith-Hefner, modernity has become a space of moral and political contestation when the ideals of a family come up for discussion.[18] Reassured by the presence of *kyai* and *pengarep*, to solve their problems, villagers almost always resort to the community-based legal system, eschewing any involvement of the state apparatus. In West Java, Grijns and Hori suggest the same development.[19] Platt has also underlined that the dominant influence of community-based law undermines the efficacy of the Marriage Law.[20]

Examining the history of the KUA in Sumbersari, I found evidence of the continuing intervention of religious leaders in the (re)making of the KUA. Their undiminished authority means that the KUA cannot ignore them but has to reach a compromise with these leaders. *Penghulu* discover it is important to maintain a good relationship with religious leaders and local elites if they want to maintain their power. In addition, non-tenured workers at the KUA, who are local villagers, play a significant role in bridging the distance between *penghulu* and the local population.

[17] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', p. 271.
[18] Smith-Hefner, 'The New Muslim Romance: Changing Patterns of Courtship and Marriage Among Educated Javanese Youth', p. 458.
[19] Grijns and Horii, 'Child Marriage in a Village in West Java (Indonesia): Compromises between Legal Obligations and Religious Concerns', p. 12.
[20] Maria Platt, *Marriage, gender and Islam in Indonesia: women negotiating informal marriage, divorce and desire* (Oxon. and New York: Routledge, 2017), p. 149.

In Sumbersari, marriage registration is regarded by the common people as a commercial relationship between the state and society. Their argument is simple: the state provides recognition by the means of a marriage certificate and people have to spend a sum of money to acquire this document. Given this perception, *penghulu* consistently find they run into complications when they try to implement the central government regulation which differentiates between *nikah kantor* and *nikah bedolan*. Before this policy came into force, nearly all marriage ceremonies were concluded at home (*nikah bedolan*). By making *nikah bedolan* much more expensive, the state pressures its citizens have their marriage ceremony performed in the office. The thinking behind the state's insistence was to make people fully dependent on its services. However, undaunted people challenge this policy and negotiate it to fit their interest.

In most cases, people differentiate between a marriage ceremony as a religious and social process in which a *kyai* or a *modin* is involved and a marriage ceremony as an administrative process in which a *penghulu* plays a role. People do not want to spend much money on conducting a *nikah bedolan*, which is why there has been a tendency to arrange *akad dua kali* (twofold marriage ceremonies). The first marriage ceremony, held at home, is the one in which they can satisfy their religious obligations, while the second is carried out at the KUA solely for the sake of registration. Of course, as the mediator between the state and society, *modin* play an important role in this and they have constructed a religious argumentation to justify this people's choice. Their solution is the idea of a *ta'kīd al-nikāḥ* (authenticating a marriage, *pengukuhan pernikahan*) to refer to the second marriage ceremony in the KUA. They have needed to invent such a new legal norm to sustain their intermediating role. The idea of *ta'kīd al-nikāḥ* is apparently an undisputed outcome of the negotiations between religious law and state law. It has been effectively used to achieve the religious significance of a marriage as the local people perceive it and to ensure the implementation of the state legal norms on marriage.

As street-level bureaucrats,[21] *penghulu* have to struggle to expand their influence and naturally they are opposed to the idea of *ta'kīd al-nikāḥ*. Nevertheless, they are also aware that *ta'kīd al-nikāḥ* has been the only way to make people conform to the legal obligation of marriage registration. Therefore, *ta'kīd al-nikāḥ* can be identified as a product of a semi-autonomous social field, in which the customs and symbols based on religious law are maintained on the one hand but which also harbours the potential to bring them into line with rules and decisions from outside the field, the state law.[22]

Furthermore, this research has discovered that *penghulu* do not work the same way as *ulama*. This differs from Nurlaelawati's study which suggests that *penghulu* pretend to act as religious authorities.[23] In my study, by contrast, *penghulu* are increasingly identifying themselves as a representative of the state. My study corroborates Van Huis' finding about the competing authorities in West Java. Religious leaders there perceived the state as a threat to their authority which led to a situation in which religious leaders in West Java denied the state authority in Islamic matters.[24] This outcome suggests two interrelated aspects: firstly, *penghulu* always speak on behalf of the state and treat the state law as the source of their authority; secondly, they use a marriage certificate as an important instrument to support their authority. In other words, in order to maintain their legitimacy, *penghulu* consistently advocate state recognition of a marriage, arguing it contributes to the protection of citizens' rights. The fact that *penghulu* are not always successful in persuading society to marry according to the state law in the first place suggests that they do not yet enjoy a solid position in society. When it is all said and done, the legitimacy of a *penghulu's* authority to control people's behaviour is dependent upon the extent to which *modin* play their roles. *Modin* are

[21] Lipsky, *Street-Level Bureaucracy: Dilemmas of the Individual in Public Services*.
[22] Moore, 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', p. 720.
[23] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 189.
[24] van Huis, 'Islamic Courts and Women's Divorce Rights in Indonesia: The Cases of Cianjur and Bulukumba', pp. 139–40.

the key to bridging the relationship between the state and society, thereby securing the *penghulu*'s position.

5. Unregistered Marriages and Seeking State Recognition

The last set of findings in this study is connected with the process of legalizing unregistered marriage. It probes into the problem of how people deal with unregistered marriage, that is, a marriage which has been concluded in accordance with the religious requirements but has not been registered at the KUA. The reason they want to legalize an unregistered marriage usually revolves around an emic account of the necessity (*kebutuhan*) of obtaining requisite legal documents, such as marriage or birth certificates mentioning the names of both the parents. The KHI decrees that unregistered marriage can be legalized retrospectively by following the process of *isbat nikah* in Islamic courts. Consequently, *isbat nikah* is the only judicial procedure available to people to legalize unregistered marriages retrospectively and is the only possible legal way to cope with unregistered marriages.

However, in practice, people have yet another way to have their unregistered marriages legalized. Instead of going to the Islamic court, they approach a *penghulu* to register it at the KUA office. In other words, the choice between *isbat nikah* in Islamic courts or registering unregistered marriage in the KUA is dependent on the needs of particular people. *Isbat nikah* is meaningful only to people who seek the legalization of unregistered marriages to obtain a birth certificate for children born out of legal wedlock. If their interest is obtaining a marriage certificate only, they do not go to Islamic courts but solicit the help of *penghulu*. The *penghulu* at the KUA acquiesce in the legalization although they know it is a violation of the law. Their justification is that they are simply helping the people to procure a required document. *Penghulu* usually demand the couples present a letter from the village administration declaring that their marriage has never been registered. Of course, this marriage registration will not change the legal status of children born before the marriage was registered.

Another relevant finding is that, in practice, the judicial procedure of *isbat nikah* can be used to legalize marriages which are not actually

permissible under the terms of the Marriage Law, that is, illegal polygyny and underage marriage. In cases of polygyny, judges do not put much effort into uncovering how the marriage ceremony concerned was performed. They just consider that according legalization is more important for the sake of children's legal status. In other words, *isbat nikah* is accepted on humane grounds. The judges make use of Article 7 (2) e "marriage which is concluded between those who do not have any impediment according to the Marriage Law", but they interpret it more widely. In addition to these two mechanisms, the Indonesian law now provides another legal opportunity for people, who do not request *isbat nikah* from Islamic courts or register unregistered marriage in the KUA, to validate the legal status of children. This is done by submitting a proposal for the children's legalization (*asal usul anak*) to an Islamic court.

This sort of *isbat nikah* supports Nurlaelawati's finding that, in many cases, judges find it hard to apply the rules which they are formally expected to observe. Because the judges cannot force society to adhere to the state law, they have the tendency to go along with the temporal interests of those seeking justice in the courts, although what they do is contradictory to the rules expounded by the state.[25] Here we see that the judges prioritize the common good (*maṣlaḥa*) of the people rather than enforcing the letter of the law as intended by the legislator.

The frontier agencies of marriage, the judges of the Islamic courts and the *penghulu* at the KUA, seem aware that the judicial norm requiring the legal obligation of marriage registration has not been entirely successful. Many Indonesian still prioritize religious validity and are not particularly bothered about the legal validity of marriage. They are willing to comply with the state law only when they are in need of state services. The state has devised the *isbat nikah* procedure to cope with this situation. Judges of the Islamic courts have to exercise their judicial discretion and the *penghulu* at the KUA deliberately transgress the law in order to help citizens comply with the requirements of the state legal framework. The implementation of

[25] Nurlaelawati, *Modernization, Tradition and Identity: The Kompilasi Hukum Islam and Legal Practice in the Indonesian Religious Courts*, p. 224.

these procedures is an important leverage in edging people towards the state.

To sum up, with regard to my findings, taken as a whole what we have witnessed is a continuing process of the penetration of state law into Indonesian society. Instead of reforming the substance of the marriage law, which would only stir up controversy and debates, the government has used a citizens' rights approach to control marriage practice. This citizens' rights approach is helpful in guiding people towards compliance with the state legal framework. In order to obtain requisite legal documents, people have no option but to legalize their marriages. However, as long as the dualism of religious validity and legal validity remains an issue, many marriages will remain unregistered. Furthermore, the central state is also endeavouring to remove all forms of informality from the procedures involved. Nevertheless, although the central government has officially removed the informal authority to act from marriage functionaries, in practice it seems it is an uphill battle to reduce the latter's intervention.

Moreover, in terms of legalization of unregistered marriages, we have also witnessed the decision by judges of Islamic courts and *penghulu* at the KUA to adopt a lenient approach towards the rules governing marriage. In certain cases, *penghulu* are willing to turn a blind eye to the rules, while the judges are ready to exercise judicial discretion to enable them to grant state recognition to a marriage. This situation has led to continuing legal plurality within the state. The willingness of the state officials to give a less than strict interpretation of legal rules is key to guaranteeing the functioning of the state law and will be good for the legal development of Indonesia in the future.

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Glossary and Abbreviations

adat	local customary practices and traditions
ajuddhuagi	married-off
akad nikah	a marriage ceremony
apik	good manner
aurat	Shame
akta kelahiran	birth certificate
akta nikah	marriage certificates
al-aḥwāl al-shakhṣiyya	Islamic personal status
Bahtsul Masail	producing fatwas within NU
bikr	a single/virgin woman
bebet, bobot, bibit	descent, wealth, and moral character
BP4	Badan Penasihatan, Pembinaan dan Pelestarian Perkawinan, National Board for Counselling, Fostering and Perpetuation of Marriage
Bupati	Government officer in charge of district (*kabupaten*)
Cerai gugat	State legal term for Muslim divorce initiated by the wife. Stipulated by the UU 7/1989 on Islamic courts in 1989 as an umbrella term to encompass *khuluk* and *fasakh*
Cerai hidup	Dissolution of marriage while both spouses are alive

Cerai mati	Dissolution of marriage due to death of one of spouses
Cerai talak	Indonesian legal term for Muslim divorce initiated by the husband
dhikr	remembrance of Allah
elek	ugly
fatwa	nonbinding legal opinions on a point of sharia
fiqh	Islamic legal opinion
gugat cerai	a divorce petition claimed by the wife
guru bantu	a teacher assistant
i'lān	publicity
ibadah	an act of worship
ifta'	producing fatwas
ijtihad	process of legal reasoning deriving law on the basis of the Quran and the Sunna
ījāb qabūl	offer and acceptance
ijbār	compelling power
isbat nikah	retrospective legalization of a marriage concluded by religious courts
janda mati	widow
janda cerai	divorcee
juddhu	divine destiny
kartu keluarga	family card
kesucian	purity, chastity
KHI	Kompilasi Hukum Islam, the Compilation of Islamic law that serves as a reference for judges in Islamic courts
kitab kuning	(lit. means 'yellow books') Islamic literatures, mainly in Arabic and other local languages, like Javanese and Malays, that refer to the traditional set of the Islamic texts used by the educational curriculum of *pesantren* in Indonesia
KMA	Keputusan Menteri Agama, the Decree of the Minister of Religious Affairs

kyai	traditional religious clerics
KUA	Kantor Urusan Agama, the sub-district office of religious affairs that deals with marriage registration and other religious matters such as *hajj* and family life.
kufu'	a man of her social status
kumpul kebo	sex out of wedlock
lamaran	proposing a marriage (a betrothal)
la padeh senneng	mutual love
madhhab	schools in Islamic legal jurisprudence
mahr	dower
Majelis Tarjih	a fatwa body of Muhammadiyah
manut	following the parents' decision
mapolong tolang	collecting the scattered bones
maqāṣid	higher aims-based approach to sharia
maṣlaḥa	common good
Masyumi	was a major Islamic political party in Indonesia during the Liberal Democracy Era in Indonesia (17 August 1950- 5 July 1959) and was eradicated in 1960 by President Sukarno for supporting the PRRI rebellion
modin	a village religious official; in marriage, it refers to person whose authority was given by the state as P3N (Pembantu Petugas Pencatat Nikah, assistant of marriage registrar); currently they are not officially recognized
mompong	good fortune
Muhammadiyah	A reformist organisation and the second biggest Indonesian Muslim organisation founded by Ahmad Dahlan (d.1923) in 1912
MUI	Majelis Ulama Indonesia/the Council of Indonesian Ulama, a semi-official council for Indonesian ulama established in 1975
munakkiḥ	one who solemnises a marriage contract
nafkah	the financial support of a husband for a wife

namu	visiting a girl's house
neket	to engage a girl
ngredit	paying off a lease
ngen-angen	sending a marriage proposal by a marriage broker
nikah sirri	religious marriages that are not registered
nikah di bawah tangan	unofficial marriage
nontoni	viewing
NU	Nahdlatul Ulama, the largest traditionalist Muslim organisation in Indonesia founded by Kyai Hasyim Asy'arie (d. 1947) in 1926
oreng bhagus	a good man
oreng lowar	outsiders
pacaran	courtship
pamong	village officials
pejabat	official
pendhalungan	a mixed community, an acculturation between Javanese and Madurese cultures
pengajian	religious gatherings
pengarep	a voluntarily traditional marriage broker
Pengadilan Agama	District-level Islamic court.
penghulu	a religious scholar and a leader of community; in current usage, it refers to person whose authority is given by the state as officials of the state religious affairs offices (Kantor Urusan Agama/KUA)
pesantren	traditional Islamic boarding school
Peta	Pembela Tanah Air, Defenders of the Homeland, established in 1943 to assist the Japanese colonising Indonesia.
PMA	Peraturan Menteri Agama, the Regulation of the Minister of Religion
PNI	Partai Nasional Indonesia, the Indonesian National Party that had existed before Indonesia's independence

PKI	Partai Komunis Indonesia, the Communist Party of Indonesia, was a communist party in Indonesia during the mid-20th century and was banned in 1965 by President Soeharto.
PPN	Petugas Pencatat Nikah, marriage registrars
PPPN or P3N	Pembantu Petugas Pencatat Nikah, assistants of marriage registrars
praban	maiden
qiyās	analogy
rafak	the verification of documents
reformasi	Indonesian political period that results from the reign of Suharto administration in 1998
rujuk	reconciliation
rushd	legal capacity or financial competency
RUU HMPA	Rancangan Undang-undang Hukum Materiil Pengadilan Agama Bidang Perkawinan, the Bill of Islamic Court's Material Law on Marriage
sadd al-dharī'a	blocking the means to unexpected evil
santri	Students of Islamic boarding schools (*pesantren*); it also refers to an orthodox form of Islam in contrast to the syncretic *abangan*
sijill	court records
siyāsa shar'iyya	Muslim law as expressed in regulatory decisions or policy of government.
sangkal	karma that a proposed daughter will become a spinster
Sharia	God's law for the way of living as a Muslim
solawatan	reciting prayers for the Prophet
shuhadā'	witnesses
siyāsa shar'iyya	legal-cum-political right of the ruler
sumpah jabatan	an oath of the office
surόh	betel

Tahlil	Taken from the Arabic sentence *lā Ilāha illā Allāh*, no god but Allah, it is a set of litanies recited in a communal gathering (tahlilan)
talak	divorce pronounced by a husband
taklik talak	conditional divorce
tarjīḥ	an examination of various Muslim jurists' opinions in order to determine which is most truthful to the original Sharia source
walī	a marriage guardian
walīma	feast
warung	a small restaurant
zina	adultery or premarital sex

Summary

Aligning religious law and state law: Street-level bureaucrats and Muslim marriage practices in Pasuruan, Indonesia

This thesis discusses the ways in which local officials deal with the tensions concerning the regulations on Muslim marriage and social practices that emerge as a response to such regulations. In so doing, it addresses these questions: How does the Indonesian state regulate Muslim marriage? How do local people in Pasuruan practice and negotiate the state regulations on Muslim marriage, in the light of the variety of norms imposed on them? How do local officials deal with their practices? What role do intermediaries play in this process in the context of East Javanese society?

The first chapter provides an overview of the political, religious and legal debates about how Muslim marriage in Indonesia should be governed after the 1998 Indonesian *reformasi*. The laws on marriage have increasingly been an arena of contestation between different groups in Islam. On the sub-national level, we come across the politicization of Islamic issues. Several Islam-based regional regulations covering ruling on public morality have been enacted and these have complicated the procedure of Muslim marriage as stipulated by the national law. For instance, a local regulation obliges both the bride and the groom to be able to read the Quran. on the national level, the legal reform of Muslim marriage has been continued through the drafting of the bill on the substantive law of Islamic courts. The purpose of this legal reform has been to introduce legal sanctions on those who do not register their marriage. This reform led to a public

debate and certain Islamic groups urged people to resist it. The upshot is that the reform ended in a deadlock.

Despite these tensions, the state is still determined to extend its power to control Muslim marriage in order to protect the rights of women and children. Therefore, legal reform is still work in progress. Recent legal reforms reveal that the judiciary and the civil bureaucracy have been busy securing this goal. At this point, the discourse on Muslim marriage no longer hinges on the religious and legal validity of marriage but is about the consequences of marriage registration for citizens' rights. I classify this new direction as a citizens' rights approach. In this approach, both members of the judiciary and the civil service are key actors. One important feature has concerned the judiciary's examination of the legal status under the Constitution of children born out of legal wedlock. Court decisions grant children born out of wedlock paternal recognition as long as there is sufficient proof that they have a blood relationship with the father, a decision which directly contravenes classical Islamic law. The civil bureaucracy has also been seriously addressing the consequences a of unregistered marriage for the registration of the birth of a child. Its efforts have led to the mapping out of a new policy, namely: letters of absolute responsibility (*surat pernyataan tanggungjawab mutlak*) which declare the religious validity of the marital relationship of the parents and hence the legitimacy of the child.

The second set of findings, as discussed in the second chapter, concerns the bureaucratization of marriage by focusing on bureaucratic reforms in the office dealing with Muslim marriage, i.e. Kantor Urusan Agama (KUA, the office of religious affairs). The first reform is related to an incident in East Java in which a *penghulu* was sued for corruption just because he recorded the customary extra-legal payment he collected for conducting a marriage ceremony outside the office (*nikah bedolan*). The Ministry of Religious Affairs (MoRA) introduced the differentiation of tariffs of *nikah kantor* (marriage in the office) and *nikah bedolan*. *Nikah kantor* is free of charge because a marriage certificate is treated in the same way as other civil documents. For *nikah bedolan*, people have to pay Rp. 600,000-, replacing the contested informal payment, to cover the

penghulu's expenses. However, the matter of extra-legal payment has not yet been properly solved because it linked to the position of the *modin* who, in the past, acted as the PPPN or P3N (*Pembantu Petugas Pencatat Nikah*, assistant of marriage registrar). The second reform is the elimination of the PPPN or P3N (*Pembantu Petugas Pencatat Nikah*, assistant of marriage registrar). The dismissal of P3N caused no problems in an urban community like in Yogyakarta in which dependence on *modin* was not particularly strong. However, it was less effective in rural contexts like in Pasuruan. By involving *modin* in the process of marriage, people manage to combine the religious aspect of the marriage ceremony and the administrative aspect of the marriage registration.

The last reform is the integration of the marriage registration into the civil administration. This reform has caused new problems. Currently the government officials are unlikely to be prepared to negotiate in a situation where the bride is legally underage because the system uses the data filed under a single identification number (NIK, *Nomor Induk Kependudukan*) to calculate her age. If her age does not comply with the legal requirement, the system will automatically reject the registration. In this case, *modin* are able to alleviate this situation by performing a religious marriage with a delayed registration, meaning that the marriage will be registered as soon as the spouses have reached the required minimum age.

The important position of *modin* constitutes another point which this study suggests, i.e. that the state's attempt to reform both Muslim marriage law and its own marriage bureaucracy has maintained the significance of informality in the legal implementation. This informality is important as it offers the capacity to make a compromise between people's deep interest in religious law and state law. It opens a door for the roles played by informal actors in helping ordinary people simultaneously negotiate their desire to observe their religion with all propriety and to seek state recognition. On the central state level, this informality is frowned upon as it makes inroads into the government's ideas of establishing clean governance.

Furthermore, the centrality of *modin* and religious leaders in general is reasonable if we observe how Islam extends its influence in

the Pasuruan social life. The third chapter found out that Pasuruan is inhabited by a majority of Muslim communities which generally show a tendency towards practising the traditional Islam encouraged by the NU. This religious orientation draws strength from the fact that many Pasuruan residents have historical roots in the island of Madura. The migrants have acculturated with the Javanese, a mingling which led to a distinct sub-culture called *pedalungan* or *pendhalungan*. This community has been established on the basis of patron-client relationships in which *kyai* or the leaders of *pesantren* act as the patron. The commitment to practising Islamic traditions and the strongly inculcated obedience to religious leaders (*kyai*) have led to a complicated relationship between religion and the state. This social configuration appears to have infiltrated and influenced political life too.

Additionally, Sumbersari, the area in Pasuruan in which I have been conducting my fieldwork, as is common in Maduro-Javanese areas, has to contend with an array of social problems, chief among them poverty and a tendency not to participate in formal education. This avoidance of the established formal educational system has made *pesantren* a central institution. *Pesantren* offer an alternative educational institution which is perceived to be adequate to fulfil their needs as it inculcates in students not only the knowledge they require to function in society but also instils religion and character-building in them. However, the winds of change are coming and in the last decade. *Pesantren* have been expanding their curricula to respond to a new aspiration, i.e. providing general knowledge and practical skills. This is coincident with the development on the national level which has shown a growing tendency for Islamic schools to be more open to change.

The fourth set of findings in this study, discussed in the fourth chapter and the fifth chapter, is centred on two issues: the everyday practice of marriage in a rural society and the functioning of the marriage registration bureaucracy - which is not the same as its bureaucratization, which I discussed in the previous chapter.

The fourth chapter found out that in the eyes of the people of Pasuruan, and many others in Indonesia, marriage is a purely religious

affair. It is a sacred ceremony people set tremendous store by the involvement of religious authorities, far more than they are bothered about state involvement. Nevertheless, despite the homogenous tradition of Islam in the area, I encountered internal heterogeneity of the relationship between agency of the actors involved, cultural norms and the social structure in the selection of whom to marry. It is important to note that, in all social classes, the ideas about an ideal spouse have been shaped by the discourses circulating within traditional Islam. These ideas include preserving chastity (*kesucian*) and playing according to the rules (*apik*). *Pesantren* play an important role in maintaining this *fiqh*-based understanding of marriage. Being a *santri* (student of *pesantren*) is taken as a guarantee of the purity and good morals of a girl.

The negotiations of these ideas are dependent on the role the *pengarep* (traditional marriage broker). Entrusted with the principal role of mediating the communication of the two families concerned, the work of *pengarep* is mainly important to those families whose daughters have been educated in *pesantren*. In these families, girls have limited agency and restricted room when it comes to finding a suitable future husband. It is the parents, not always the father, who determine to whom and when they will be married to. The upshot is that arranged marriage is quite common. In this situation, marriage has become a marketplace in which *pengarep* is essential to achieving the expectations of the parents.

Another key actor in marriage is the *kyai*. Marriage practice in Pasuruan shows the on-going centrality of the role of *kyai* in the production of an Islam-based legal norm to safeguard sexual morality. This is a tricky point as a decision based on these norms sometimes conflicts with the state legal norms. "Preventing harm (extramarital sex and unwanted pregnancy) should be the priority" is always the overriding argument presented. Differences of opinions between traditional *fiqh* doctrines are essential to the construction of the *kyai*'s legal reasoning, which should comply with the interests of the people concerned. From a social perspective, religious marriage has been an effective way to tackle the problems caused by religious morality and female sexuality when the state law is difficult to comply with.

In the fifth chapter, with regard to the functioning of the marriage registration bureaucracy, I found evidence of the continuing intervention of religious leaders in the (re)making of the KUA. Their undiminished authority means that the KUA cannot ignore them but has to reach a compromise with these leaders. *Penghulu* discover it is important to maintain a good relationship with religious leaders and local elites if they want to maintain their power. In addition, non-tenured workers at the KUA, who are local villagers, play a significant role in bridging the distance between *penghulu* and the local population.

In Pasuruan, marriage registration is regarded by the common people as a commercial relationship between the state and society. Their argument is simple: the state provides recognition by the means of a marriage certificate and people have to spend a sum of money to acquire this document. Given this perception, *penghulu* consistently find they run into complications when they try to implement the central government regulation which differentiates between *nikah kantor* and *nikah bedolan*. Before this policy came into force, nearly all marriage ceremonies were concluded at home (*nikah bedolan*). By making *nikah bedolan* much more expensive, the state pressures its citizens have their marriage ceremony performed in the office. The thinking behind the state's insistence was to make people fully dependent on its services. However, undaunted people challenge this policy and negotiate it to fit their interest.

In fact, people do not want to spend much money on conducting a *nikah bedolan*, which is why there has been a tendency to arrange *akad dua kali* (twofold marriage ceremonies). The first marriage ceremony, held at home, is the one in which they can satisfy their religious obligations, while the second is carried out at the KUA solely for the sake of registration. Of course, as the mediator between the state and society, *modin* play an important role in this and they have constructed a religious argumentation to justify this people's choice. Their solution is the idea of a *ta'kīd al-nikāḥ* (authenticating a marriage, *pengukuhan pernikahan*) to refer to the second marriage ceremony in the KUA. They have needed to invent such a new legal norm to sustain their intermediating role.

The last set of findings, discussed in the sixth chapter, is connected with the process of legalizing unregistered marriage. It probes into the problem of how people deal with unregistered marriage, that is, a marriage which has been concluded in accordance with the religious requirements but has not been registered at the KUA. The reason they want to legalize an unregistered marriage usually revolves around an emic account of the necessity (*kebutuhan*) of obtaining requisite legal documents, such as marriage or birth certificates mentioning the names of both the parents. The KHI decrees that unregistered marriage can be legalized retrospectively by following the process of *isbat nikah* in Islamic courts. Consequently, *isbat nikah* is the only judicial procedure available to people to legalize unregistered marriages retrospectively and is the only possible legal way to cope with unregistered marriages.

In practice, people have yet another way to have their unregistered marriages legalized. Instead of going to the Islamic court, they approach *penghulu* to register it at the KUA office. In other words, the choice between *isbat nikah* in Islamic courts or registering unregistered marriage in the KUA is dependent on the needs of particular people. *Isbat nikah* is meaningful only to people who seek the legalization of unregistered marriages to obtain a birth certificate for children born out of legal wedlock. If their interest is obtaining a marriage certificate only, they do not go to Islamic courts but solicit the help of *penghulu*. The *penghulu* at the KUA acquiesce in the legalization although they know it is a violation of the law.

In regards to the above findings, we see that the frontier agencies of marriage, the judges of the Islamic courts and the *penghulu* at the KUA, seem aware that the judicial norm requiring the legal obligation of marriage registration has not been entirely successful. Many Indonesian still prioritize religious validity and are not particularly bothered about the legal validity of marriage. They are willing to comply with the state law only when they are in need of state services. The state has devised the *isbat nikah* procedure to cope with this situation. Judges of the Islamic courts have to exercise their judicial discretion and the *penghulu* at the KUA deliberately transgress the law in order to help citizens comply with the requirements of the state

legal framework. The implementation of these procedures is an important leverage in edging people towards the state.

Based on the above findings, this study suggests that the legal reform introduced in the marriage laws was intended to facilitate state control of marriage practice and reinforce state authority, one part of which was eradicating informality. The central government assumes that the lower levels of government are capable of building a direct relationship with ordinary people without necessarily involving intermediaries. However, in practice, it does not work that way. Effective marriage registration needs these intermediaries, particularly in communities in which religious leaders command great respect. Nevertheless, the Marriage Law still defines marriage as a religious ceremony. In these communities, marriage registration includes two inseparable dimensions. Firstly, it is just an administrative matter. The second dimension has to do with aspects related to the religious validity of a marriage and the proper conclusion of a marriage ceremony. Some state *penghulu* are considered to lack the religious legitimacy to be able to perform the second dimension. Traditionally *modin* do have such legitimacy. This is why informality has survived.

While these findings might seem to indicate a competition between state and local religious leaders, I want to underline that the relationship between the state and religion in Muslim marriage – at least in the cases I examined - is actually a matter of mutual adjustment. Religious authorities do indeed accept the state's intervention in marriage law, if this is limited to marriage registration. Simultaneously, local people are increasingly eager to register marriages as this makes them eligible to have access to the state services. Of course, there is a small segment of religious leaders who oppose the state law, especially those who do not accept the democratic foundation of the nation-state and propagate the idea of a so-called Islamic state. However, the large majority can accept some level of intervention of the nation-state in Muslim marriage if two conditions are met. Firstly, the state law cannot challenge the fundamental principles of Sharia law or introduce something impermissible according to classical understanding of Sharia law, such

as allowing same-sex marriage or totally prohibiting polygyny. However, this is hardly ever the case in Indonesia as to a large extent the legal reforms have taken into account what is permissible and impermissible according to the common understanding of Sharia law. Secondly, when the state law is too rigid to deal with some particular practices which are socially and religiously acceptable, when religious law is applied. To local people, religious law is a more responsive instrument for handling problems of sexual morality such as *zina* (extra-marital sexual relations) and teenage pregnancy. They prioritize the religious validity of marriage rather than its legal validity.

In addition, what we have witnessed is a continuing process of the penetration of state law into Indonesian society. Instead of reforming the substance of the marriage law, which would only stir up controversy and debates, the government has used a citizens' rights approach to control marriage practice. This citizens' rights approach is helpful in guiding people towards compliance with the state legal framework. In order to obtain requisite legal documents, people have no option but to legalize their marriages. However, as long as the dualism of religious validity and legal validity remains an issue, many marriages will remain unregistered. Furthermore, the central state is also endeavouring to remove all forms of informality from the procedures involved. Nevertheless, although the government has officially removed the authority to act informally from marriage functionaries, in practice it seems it is an uphill battle to reduce the latter's intervention. Similarly, we have also witnessed the decision by judges of Islamic courts and *penghulu* at the KUA to adopt a lenient approach towards the rules governing marriage. In certain cases, *penghulu* are willing to turn a blind eye to the rules, while the judges are ready to exercise judicial discretion to enable them to grant state recognition to a marriage. This situation has led to continuing legal plurality within the state. The willingness of the state officials to give a less than strict interpretation of legal rules is key to guaranteeing the functioning of the state law and will be good for the legal development of Indonesia in the future.

ZACHRANTE ŽIVOT!
Harlah
Satu Abad NU
SATU ABAD NU
1344 - 1444 H
SAYA BANGGA JADI
ORANG NU

Samenvatting

Harmonisatie van religieus en statelijk recht: Lokale ambtenaren en Islamitische huwelijkspraktijken in Pasuruan, Indonesië

Dit proefschrift onderzoekt hoe lokale ambtenaren omgaan met spanningen die voortvloeien uit overheidsregulering van Islamitische huwelijken. Het kijkt ook naar de sociale praktijken die zijn ontstaan als reactie van de bevolking op deze regulering. Om hier inzicht in te krijgen, worden de volgende drie vragen gesteld: Hoe en in welke mate reguleert de Indonesische staat huwelijken tussen moslims? Wat vindt de lokale bevolking in Pasuruan van deze regulering van het Islamitische huwelijk en hoe gaat men hiermee om? En hoe reageren lokale ambtenaren hier weer op?

In het eerste hoofdstuk wordt een overzicht gegeven van de politieke, religieuze en juridische debatten over de regulering van Islamitische huwelijken, vanaf de Indonesische *reformasi* die begon in 1998. De huwelijkswetgeving is in toenemende mate een twistpunt geworden tussen verschillende groeperingen binnen de Islam. Op het sub-nationale niveau zien we de politisering van Islamitische kwesties. Er zijn verschillende, op de Islam gebaseerde, regionale verordeningen uitgevaardigd met voorschriften over openbare zeden en sommige van deze verordeningen hebben de nationaalrechtelijke procedure met betrekking tot huwelijkssluiting moeilijker gemaakt. Een plaatselijke verordening bepaalt dan bijvoorbeeld dat zowel de bruid als de bruidegom in staat moeten zijn om de Koran te kunnen lezen voordat ze mogen trouwen.

Op nationaal niveau is de hervorming van de huwelijkswetgeving voor moslims voortgezet met een wetsontwerp inzake materieel recht van Islamitische rechtbanken. Het doel van deze wetshervorming is om sancties op te kunnen leggen aan stellen die hun huwelijk niet laten registreren. Deze hervorming heeft een openbaar debat op gang gebracht en sommige Islamitische groeperingen hebben de bevolking aangezet zich hiertegen te verzetten. Het resultaat is dat de hervorming in een impasse is geraakt.

Ondanks deze spanningen is de overheid nog steeds vastbesloten om het Islamitische huwelijk beter onder controle te brengen, met als doel om de rechten van vrouwen en kinderen te beschermen. Recente rechtsontwikkelingen laten zien dat de rechterlijke macht en het bestuur hier beide een rol in spelen. Hierbij draait het niet langer om de religieuze en wettelijke geldigheid van een huwelijk, maar is het accent verschoven naar de gevolgen van huwelijksregistratie voor de rechten van burgers. In mijn proefschrift benoem ik deze nieuwe richting als 'bevordering van burgerrechten'.

Een belangrijk aspect is de juridische status van kinderen die buiten een huwelijk geboren worden. Door rechterlijke uitspraken die zich beroepen op de Grondwet kunnen buitenechtelijke kinderen door de vader erkend worden als er voldoende bewijs is dat zij bloedverwantschap met hem hebben, een beslissing die rechtstreeks indruist tegen het klassieke Islamitische recht. De overheid heeft zich ook serieus beziggehouden met de consequenties van een niet-geregistreerd huwelijk voor de registratie van een kind. Deze inspanningen hebben geleid tot het ontwerpen van nieuw beleid, namelijk 'brieven van absolute verantwoordelijkheid' (*surat pertanggungjawaban mutlak*) die de religieuze geldigheid van het huwelijk bewijzen, en daarmee de officiële status van het kind.

In het tweede hoofdstuk wordt een tweede reeks onderzoeksbevindingen uiteengezet die betrekking hebben op de bureaucratisering van het huwelijk. Deze gaan over de bureaucratische hervormingen binnen het Kantor Urusan Agama (KUA, Bureau voor Religieuze Zaken). Deze instantie houdt zich bezig met de registratie van het Islamitische huwelijk. De eerste hervorming houdt verband met een incident in Oost-Java. Hierbij werd een

penghulu (hoofd van de KUA) beschuldigd van corruptie, enkel en alleen omdat hij de gebruikelijke, maar buitenwettelijke, kosten registreerde die hij had geïnd voor het uitvoeren van huwelijksceremonies buiten een officiële trouwlocatie van de overheid (*nikah bedolan*). Om dit probleem op te lossen heeft het Ministerie van Religieuze Zaken (MoRA) nu gedifferentieerde tarieven ingevoerd voor *nikah kantor* (huwelijksvoltrekking op een officiële trouwlocatie) en *nikah bedolan*. *Nikah kantor* is gratis omdat een huwelijksakte op dezelfde manier wordt behandeld als andere documenten betreffende burgerzaken. Voor *nikah bedolan* moet men Rp. 600,000- betalen ter vervanging van de betwiste informele betaling om de kosten van de *penghulu* te vergoeden.

Het geschil over de buitenwettelijke betaling is echter nog niet naar behoren opgelost omdat de kwestie gerelateerd is aan de positie van de *modin.* Deze treedt op als PPPN of P3N (*Pembantu Petugas Pencatat Nikah*), assistent van de *penghulu*, maar heeft nu geen officiële positie meer. De tweede hervorming is namelijk de afschaffing van de P3N. De afschaffing van de P3N heeft weinig problemen opgeleverd in een stedelijke gemeenschap als Yogyakarta waar de afhankelijkheid van de *modin* niet bijzonder groot was, maar in rurale gebieden zoals Pasuruan is de afschaffing een probleem. Door een *modin* te betrekken bij de huwelijksceremonie accepteert men de combinatie van het religieuze aspect van de huwelijksceremonie en het administratieve aspect van de registratie van het huwelijk. Zonder *modin* willen veel paren hun huwelijk niet registreren.

De laatste hervorming betreft het opnemen van de registratie van het huwelijk in de gemeentelijke basisadministratie. Dit heeft echter nieuwe problemen gecreëerd. Overheidsambtenaren zijn namelijk waarschijnlijk niet langer bereid tot onderhandeling als de bruid volgens de wet minderjarig is. Het systeem maakt voor de berekening van de leeftijd gebruik van gegevens die onder één identificatienummer (NIK, *Nomor Induk Kependudukan*) zijn opgeslagen. Als de leeftijd van de bruid niet overeenstemt met de wettelijk vereiste leeftijd, wordt de registratie automatisch afgewezen door het systeem. In zo'n geval kunnen *modin* behulpzaam zijn om een oplossing te bieden: zij kunnen een religieus huwelijk voltrekken met

uitgestelde registratie. Het huwelijk wordt dan pas geregistreerd als de betrokkenen de wettelijk vereiste minimumleeftijd voor het sluiten van een huwelijk hebben bereikt.

Dit alles laat zien dat de hervormingspogingen van de overheid de betekenis van informaliteit in de toepassing van het overheidsrecht scherper in beeld hebben gebracht. Deze informaliteit is van belang omdat het een uitweg biedt voor mensen in de vorm van een compromis tussen het religieuze recht, die belangrijk zijn voor mensen, en het statelijk recht, dat nog steeds vaak ver van hen af staan. Informele actoren helpen (gewone) mensen om de religieuze gewoonten met betrekking tot het huwelijk na te leven en daarnaast ook erkenning van het huwelijk door de staat te verkrijgen. Op het niveau van de centrale staat wordt deze informele weg echter afgekeurd omdat dit indruist tegen de ideeën van de overheid over het instellen van 'zuiver' bestuur.

De centrale positie die *modin,* en religieuze leiders in het algemeen, innemen is goed te verklaren uit de toegenomen invloed van de Islam op het sociale leven van de bewoners van Pasuruan. In hoofdstuk drie wordt uiteengezet dat de bevolking van Pasuruan voor het merendeel door moslimgemeenschappen wordt gevormd die in het algemeen de traditionele islam van Nahdlatul Ulama volgen. Deze religieuze oriëntatie wordt versterkt door het feit dat de historische wortels van veel inwoners van Pasuruan op het eiland Madura liggen. Deze migranten hebben de Javaanse cultuur geassimileerd, wat heeft geleid tot een tot een aparte subcultuur die *pedalungan* of *pendhalungan* wordt genoemd. *Pedalungan* is gebaseerd op patroon-cliënt relaties waarin *kyai* of de leiders van *pesantren* de rol van patroon (beschermheer) op zich nemen. Het streven naar handhaving van Islamitische tradities en de sterk geïnstitutionaliseerde gehoorzaamheid aan religieuze leiders (*kyai*) hebben de relatie tussen godsdienst en staat gecompliceerd. Deze sociale configuratie lijkt ook de politiek te hebben geïnfiltreerd en beïnvloed.

Tevens heeft Sumbersari, het gebied in Pasuruan waar ik mijn veldwerk heb uitgevoerd, te kampen met diverse sociale problemen. Armoede en een neiging om af te zien van deelname aan het formele onderwijs zijn de belangrijkste problemen. Deze vermijding van het

gevestigde formele onderwijssysteem heeft geleid tot een centrale positie van de zogenaamde *pesantren*. *Pesantren* bieden een alternatief onderwijssysteem dat wordt gezien als passend voor de opleidingsbehoeften van de bevolking, omdat ze niet alleen de kennis bieden die nodig is om maatschappelijk te functioneren, maar studenten ook onderwijzen in religie en karaktervorming. Toch waait in het laatste decennium de wind van verandering ook hier. *Pesantren* hebben hun onderwijsprogramma's uitgebreid om in te spelen op de nieuwe ambities; ze houden zich nu meer bezig met algemene kennis en praktische vaardigheden. Dit komt overeen met de ontwikkeling op nationaal niveau, waar bij Islamitische scholen een groeiende tendens zichtbaar is om open te staan voor verandering.

In de vierde reeks onderzoeksbevindingen, die in het vierde en vijfde hoofdstuk van dit proefschrift worden besproken, staan twee punten centraal: de gewoonten rond het huwelijk in een rurale samenleving, en het functioneren van de ambtelijke organisatie belast met de huwelijksregistratie.

In het vierde hoofdstuk komt naar voren dat het huwelijk in de ogen van de bevolking van Pasuruan, net als in die van veel anderen in Indonesië, een puur religieuze zaak is. Het is een heilige ceremonie en mensen hechten zeer veel waarde aan de betrokkenheid van de religieuze autoriteiten bij een huwelijk – veel meer dan dat ze zich bezighouden met de betrokkenheid van de staat. Ondanks de homogene traditie van de Islam in deze regio, kwam ik toch als het ging om de selectie van huwelijkspartners verschillen tegen. Deze hadden betrekking op de 'agency' van de betrokken personen, de culturele normen en de sociale structuur. Het is belangrijk om op te merken dat in alle sociale klassen de ideeën over een ideale echtgeno(o)t(e) zijn gevormd door de opvattingen binnen de traditionele Islam. Deze ideeën omvatten ook het behoud van kuisheid (*kesucian*) en het respecteren van de regels (*apik*). *Pesantren* (godsdienstscholen) spelen een belangrijke rol in het behouden van deze op *fiqh* gebaseerde opvattingen over het huwelijk. Het zijn van *Santri* (student van *pesantren*) wordt gezien als een garantie voor de maagdelijkheid en een hoge morele standaard van een meisje.

De onderhandeling over deze ideeën is afhankelijk van de rol van de *pengarep* (traditionele huwelijksmakelaar). Zijn bemiddeling tussen de betrokken families is vooral belangrijk voor families van wie de dochters zijn opgevoed in *pesantren.* Deze meisjes hebben beperkte zeggenschap en weinig speelruimte bij het vinden van een toekomstige echtgenoot. Het zijn de ouders (en niet altijd de vader) die beslissen wanneer en met wie een meisje gaat trouwen en gearrangeerde huwelijkijken zijn nog steeds heel gebruikelijk. In deze situatie komt het huwelijk tot stand op een soort marktplaats, waarbij een *pengarep* noodzakelijk is om de verwachtingen van de ouders te 'managen'.

Een andere centrale actor bij het sluiten van een huwelijk is de *kyai.* De praktijk van de huwelijksvoltrekking in Pasuruan laat zien hoe belangrijk deze is bij de vastlegging van een wettelijke, op de Islam gebaseerde, regel om de seksuele moraal te waarborgen. Dit is een gevoelige kwestie, omdat beslissingen gebaseerd op deze regels soms botsen met de regels van het statelijke recht. Het richtsnoer is vooral 'schade voorkomen', dat wil zeggen geen buitenechtelijke seks en ongewenste zwangerschap. Verschillen van inzicht in traditionele *figh* doctrines zijn belangrijk voor het construeren van een juridische redenering van de *kyai* die beantwoordt aan de belangen van de betrokken personen. Vanuit sociaal perspectief is het religieuze huwelijk een effectieve manier om problemen aan te pakken die voortkomen uit het verenigen van religieuze moraal en vrouwelijke seksualiteit, als het statelijke recht die mogelijkheid niet biedt.

In hoofdstuk vijf wordt beschreven hoe de bureaucratie rond de huwelijksregistratie werkt. Uit het onderzoek blijkt dat er sprake is van een voortdurende bemoeienis van religieuze leiders met (re)organisatie van de KUA. Vanwege het gezag dat ze in de gemeenschap hebben kan de KUA hen niet negeren maar moet compromissen met ze sluiten; als ze dit niet doen verliezen *penghulu* hun invloed. Medewerkers met een flexibel contract bij de KUA, vaak afkomstig uit de lokale gemeenschap, spelen vaak een belangrijke rol in het overbruggen van de afstand tussen *penghulu* en de lokale bevolking.

In Pasuruan wordt de huwelijksregistratie door de bevolking beschouwd als een commerciële kwestie. Hun redenering is

eenvoudig: de staat zorgt voor erkenning in de vorm van een huwelijksakte en om dit document te verkrijgen moet je een geldsom betalen. Dit maakt het lastig voor *penghulu* om bepaalde overheidswetgeving uit te voeren, bijvoorbeeld de regels die een onderscheid maken tussen *nikah kantor* en *nikah bedolan*. Voordat dit beleid van kracht werd, werden bijna alle huwelijksceremonies bij de familie thuis voltrokken (*nikah bedolan*). De nieuwe regels hebben *nikah bedolan* veel duurder gemaakt is, waarmee de overheid burgers onder druk zet om de huwelijksceremonie in een trouwlocatie van de overheid te houden en burgers op die manier volledig afhankelijk te maken van overheidsdiensten. Veel burgers trekken zich hier echter weinig van aan en proberen door onderhandeling over de regels toch hun voorkeur te realiseren.

De meest gebruikelijke oplossing om wel een *nikah bedolan* te houden maar er niet veel geld aan uit te geven is *akad dua kali* (tweevoudige huwelijksceremonies). De eerste huwelijksceremonie, die thuis wordt gehouden, is die waarin huwelijksparen aan hun religieuze verplichtingen kunnen voldoen terwijl de tweede huwelijksceremonie uitsluitend vanwege de registratie bij de KUA wordt gehouden. Als bemiddelaars tussen staat en samenleving vervullen *modin* hierbij een belangrijke rol. Zij hebben ook een religieuze argumentatie geconstrueerd om de keuze van de betrokkenen te rechtvaardigen. Dit is de idee dat de tweede huwelijksceremonie (de *nikah kantor*) een *ta'kīd al-nikāḥ* is, het bevestigen van de *nikah bedolan*. Zij hebben deze nieuwe juridische regel ook in het leven geroepen om hun bemiddelende rol in stand te kunnen houden.

De laatste reeks onderzoeksbevindingen, die in het zesde hoofdstuk beschreven wordt, betreft het proces van legalisatie van niet-geregistreerde huwelijken. De vraag is hoe men omgaat met een niet-geregistreerd huwelijk, dat wil zeggen een huwelijk dat is gesloten volgens de religieuze voorschriften maar dat niet is geregistreerd bij de KUA. De reden voor legalisering heeft een 'emic' oorzaak, namelijk de noodzaak (*kebutuhan*) om vereiste juridische documenten te verkrijgen zoals huwelijks- of geboorteakten met vermelding van de namen van beide ouders. De KHI bepaalt dat niet-

geregistreerde huwelijken kunnen worden gelegaliseerd door het proces van *isbat nikah* te volgen bij Islamitische rechtbanken. *Isbat nikah* is de enige formeel beschikbare procedure om niet-geregistreerde huwelijken met terugwerkende kracht te legaliseren.

In praktijk hebben betrokkenen echter nog een andere mogelijkheid om hun niet-geregistreerde huwelijk te legaliseren. In plaats van naar de Islamitische rechtbank te gaan, kunnen zij zich wenden tot een *penghulu* om hun huwelijk te registreren in het kantoor van de KUA. De keuze tussen *isbat nikah* bij de Islamitische rechtbank of het registreren van het huwelijk bij de KUA hangt af van wat de betreffende paren precies willen bereiken. *Isbat nikah* is alleen van belang voor mensen die hun niet-geregistreerde huwelijk willen laten legaliseren om een geboorteakte voor hun kinderen te verkrijgen die beide ouders vermeldt. Als zij hun niet-geregistreerde huwelijk slechts willen laten legaliseren om een huwelijksakte te verkrijgen, gaan zij niet naar de islamitische rechtbank maar roepen de hulp in van een *penghulu*. De *penghulu* van de KUA werken hier doorgaans aan mee, hoewel zij weten dat dit in strijd is met de wet.

We zien dus dat instanties die betrokken zijn bij de huwelijksregistratie, de rechters van de Islamitische rechtbanken en de *penghulu* van de KUA, zich ervan bewust zijn dat de juridische regel die de wettelijke registratie van huwelijken verplicht stelt niet vanzelf wordt nageleefd. Veel Indonesiërs geven nog steeds prioriteit aan de religieuze geldigheid van hun huwelijk en maken zich geen grote zorgen over de geldigheid van hun huwelijk volgens het statelijk recht. Zij zijn alleen bereid zich aan het statelijke recht te houden wanneer zij diensten van de overheid nodig hebben. Om met deze situatie om te gaan passen rechters de *isbat nikah* zo toe dat zij burgers helpen om aan de eisen van dat statelijke recht te voldoen. *Penghulu* van de KUA gaan nog een stap verder en overtreden bewust de wet om burgers te helpen. Deze uitvoeringspraktijken zijn echter essentieel om burgers binnen het bereik van de staat te houden.

De hervorming van de huwelijkswetten was bedoeld om de controle van de overheid op de huwelijkspraktijken te versterken en het staatsgezag te bevorderen. Het uitroeien van alle vormen van informaliteit was hier een onderdeel van. De centrale overheid

veronderstelt dat de lagere bestuursniveaus in staat zijn om een directe relatie op te bouwen met de lokale burgers, zonder de noodzaak tot bemiddeling van tussenpersonen. In de praktijk werkt dit dus niet zo. Voor een effectieve huwelijksregistratie zijn deze tussenpersonen nodig, vooral in gemeenschappen waar religieuze leiders veel respect genieten. In deze gemeenschappen heeft huwelijksregistratie twee onlosmakelijk met elkaar verbonden dimensies. Ten eerste is de huwelijksregistratie een zuiver administratieve zaak. De tweede dimensie betreft de aspecten die verband houden met de religieuze geldigheid van een huwelijk en de correcte uitvoering van een huwelijksceremonie. Sommige *penghulu* (die de staat vertegenwoordigen) beschikken niet over de religieuze legitimiteit om de tweede dimensie naar behoren uit te voeren. Vanuit de traditie hebben *modin* die legitimiteit wel en vervullen ze daarmee een essentiële rol in het verbinden van staat en maatschappij.

Hoewel deze onderzoeksbevindingen lijken te wijzen op een concurrentiestrijd tussen de staat en lokale religieuze leiders, wil ik benadrukken dat de relatie tussen staat en religie met betrekking tot het islamitische huwelijk – in ieder geval in Pasuruan – een kwestie is van wederzijdse aanpassing. Religieuze leiders staan open voor interventie van de staat in het huwelijksrecht zolang deze beperkt blijft tot registratie van het huwelijk. Tegelijkertijd is de lokale bevolking steeds meer geneigd om huwelijken te laten registreren, omdat zij daardoor toegang krijgen tot overheidsdiensten. Allicht is er een kleine groep religieuze leiders die zich verzet tegen het statelijke recht, in het bijzonder degenen die de democratische grondslag van de natiestaat niet aanvaarden en het idee van een staat naar Islamitisch recht propageren. De grote meerderheid kan echter een zekere mate van inmenging in het Islamitische huwelijk door de staat accepteren indien aan twee voorwaarden wordt voldaan.

Ten eerste mag de staat de grondbeginselen van de Sharia niet in twijfel trekken of regels invoeren die volgens de klassieke opvattingen van de Sharia ontoelaatbaar zijn, zoals het toestaan van een huwelijk tussen personen van hetzelfde geslacht of een algeheel verbod op polygynie. Dit is in Indonesië echter nauwelijks aan de orde aangezien er bij wetshervormingen door de staat in ruime mate rekening wordt

gehouden met wat geoorloofd en ongeoorloofd is volgens de gangbare opvattingen van de Sharia.

Ten tweede wordt, wanneer het staatsrecht te rigide is om met bepaalde sociale en religieuze praktijken om te gaan, het religieuze recht toegepast. In de ogen van de lokale bevolking is het religieuze recht een beter toegankelijk en meer aanvaardbaar instrument om met problemen om te gaan op het gebied van de seksuele moraal, zoals *zina* (buitenechtelijke seksuele relaties) of tienerzwangerschappen. Daarom geeft men prioriteit aan de religieuze geldigheid van een huwelijk boven de geldigheid volgens het statelijke recht.

Verder zien we een voortdurend proces van uitbreiding van het statelijke recht in de Indonesische samenleving. In plaats van de huwelijkswet inhoudelijk te hervormen, wat alleen maar tot debatten en controverses zou leiden, heeft de regering nu de 'bevordering van burgerrechten' gekozen om praktijken met betrekking tot het huwelijk te controleren. Deze benadering van burgerrechten is nuttig om mensen in de richting van het juridische kader van de staat te bewegen. Om de vereiste juridische documenten te verkrijgen, hebben betrokkenen geen andere keuze dan hun huwelijk te legaliseren conform het statelijke recht.

Zolang het dualisme tussen religieuze geldigheid en wettelijke geldigheid een belangrijk punt blijft, zullen veel huwelijken ongeregistreerd blijven. Bovendien probeert de centrale overheid alle vormen van informaliteit uit de statelijke procedures te verwijderen. Hoewel de overheid officieel de bevoegdheid tot informeel handelen heeft ontnomen aan huwelijksfunctionarissen, blijkt het in de praktijk vrijwel onmogelijk om informele bemiddeling door deze laatsten in te perken. Zo laat dit onderzoek ook zien dat zowel rechters van Islamitische rechtbanken als *penghulu* van de KUA zich flexibel opstellen ten opzichte van de statelijke regels rond het huwelijk. In bepaalde gevallen zijn *penghulu* bereid om de regels te omzeilen terwijl rechters bereid zijn om hun juridische beoordelingsvrijheid aan te wenden om een huwelijk door de staat te laten erkennen. Deze situatie heeft geleid tot een voortdurend rechtspluralisme binnen de staat. De bereidwilligheid van overheidsambtenaren om de wettelijke regels in sommige gevallen niet te star toe te passen, is van essentieel

belang om het functioneren van het statelijke recht te waarborgen, hetgeen bevorderlijk is voor de algehele rechtsontwikkeling in Indonesië.

Pengurus Cabang Istimewa
Nahdlatul Ulama Belanda mengucapkan
PENGURUS CABANG ISTIMEWA
NAHDLATUL ULAMA
BELANDA
Selamat dan Sukses
Dr. Muhammad Latif Fauzi
(Ketua Tanfidziyah PCI NU Belanda 2019-2021)
atas
diraihnya gelar doktor bidang Islamic studies dari Leiden University
Belanda pada Selasa, 18 Mei 2021 dengan judul disertasi:
Aligning religious law and state law: Street-level bureaucrats
and Muslim marriage practices in Pasuruan, Indonesia
Semoga gelar yang diraih mengantarkan kepada
keberkahan dan kemanfaatan ilmu
NU Belanda
@nubelanda
PCI NU Belanda
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Curriculum Vitae

Muhammad Latif Fauzi was born in Sidoarjo, East Java on 23 December 1982. Currently he is a lecturer at Sharia Faculty, IAIN (Institut Agama Islam Negeri Surakarta, the State Islamic Institute for Islamic studies of Surakarta). He obtained his MA in Islamic studies from Leiden University in 2008 and completed the earlier Master degree in Islamic law from UIN (Universitas Islam Negeri, the State Islamic University) Sunan Kalijaga, Yogyakarta in 2006. As of June 2019, he served as the chairman of NU Belanda. He has published a number of articles in peer-reviewed journals and a book chapter entitled "Women in Local Politics: The Byelaw on Prostitution in Bantul." In *Islam, Politics and Change: The Indonesian Experience after the Fall of Suharto*, edited by Kees van Dijk and Nico J. G. Kaptein, pp. 195–215. 2016. Leiden: Leiden University Press. He can be reached at muhlatiffauzi@iain-surakarta.ac.id.

UNIVERSITAS ISLAM NEGERI

Raden Mas Said

SURAKARTA – INDONESIA

Universiteit
Leiden
The Netherlands

This thesis discusses the ways in which local officials deal with the tensions concerning regulations on Muslim marriage and social practices that emerge as a response to such regulations. In so doing, it addresses these questions: How does the Indonesian state regulate Muslim marriage? How do local people in Pasuruan practice and negotiate the state regulations on Muslim marriage, in the light of the variety of norms imposed on them? How do local officials deal with their practices? What role do intermediaries play in this process? In an attempt to answer these key questions, the thesis investigates what legal reforms the state has set in motion, how state officials interpret and implement the state law, how religious leaders respond to these legal reforms and how the practices adopted by Muslims reveal their responses. This thesis examines marriage practices in a Muslim community in Pasuruan, East Java, Indonesia.

By looking at the implementation of legal norms on marriage, the functioning of marriage bureaucracy and the people's attitudes towards state recognition of marriage in the local setting, this thesis suggests that Indonesia is experiencing a continuing process of the penetration of state law into society. At the law-making level, instead of reforming the substance of the marriage law, which would only stir up controversy and debates, the government has used a citizens' rights approach to control marriage practice. This citizens' rights approach is helpful in guiding people towards compliance with the state legal framework.

Furthermore, the central state is also endeavouring to remove all forms of informality from the procedures involved. Nevertheless, in practice, it seems it is an uphill battle to reduce informal intervention. Moreover, in terms of legalisation of unregistered marriages, we have witnessed the decision by judges of Islamic courts and *penghulu* (marriage registrars) at the KUA (Kantor Urusan Agama, the sub-district office of religious affairs) to adopt a lenient approach towards the rules governing marriage. In certain cases, *penghulu* are willing to turn a blind eye to the rules, while the judges are ready to exercise judicial discretion to enable them to grant state recognition to a marriage. This situation has led to continuing legal plurality within the state. The willingness of the state officials to give a less than strict interpretation of legal rules is key to guaranteeing the functioning of the state law and will be good for the legal development of Indonesia in the future.

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